

DECISIONS 2001

01-002, 01-003 and 01-005

Appellant(s) – James Paron, the Village of Wabamun and the Lake Wabamun Enhancement and Protection Association, **Operator** – TransAlta Utilities Corporation, **Location** – Village of Wabamun, **Type of Appeal** – Costs Decision

The Board held a preliminary meeting, a mediation meeting and settlement conference, and a hearing related to a number of appeals in relation to Approval No. 10323-02-00 issued to TransAlta Utilities Corporation (TransAlta) for the operation and reclamation of the Lake Wabamun Thermal Electric Power Plant, located in the Village of Wabamun, west of Edmonton, Alberta. Ten appeals were received by the Board in response to the Approval being issued to TransAlta. Among these were appeals filed by the Enmax Energy Corporation (Enmax), Mr. James Paron, the Village of Wabamun, and the Lake Wabamun Enhancement and Protection Association (LWEPA). Enmax was concerned that some of the conditions of the Approval would result in cost increases to Enmax as a result of a Power Purchase Agreement it had entered into with TransAlta, and Enmax sought to have these conditions changed. LWEPA filed an appeal opposing the changes requested by Enmax. (Enmax's appeal was subsequently dismissed by the Board following the preliminary meeting.) Mr. Paron's appeal sought to have certain conditions of the Approval strengthened. The Village of Wabamun's appeal sought to delay the implementation of certain provisions of the Approval. Following the hearing of this appeal, Mr. Paron, the Village of Wabamun, and LWEPA filed requests for final costs. LWEPA only requested final costs in relation to its participation at the preliminary meeting. In the Board's Cost Decision of February 8, 2002, the Board approved the request for final costs by LWEPA (in the amount of \$5,079.25) in relation to the preliminary meeting only and these costs are to be paid by Enmax. The Board has denied the request for final costs by Mr. Paron and the Village of Wabamun.

Cite as: *Costs Decision: Paron et al.*

01-006

Appellant(s) – Talisman Energy Inc., **Operator** – Talisman Energy Inc., **Location** – near LaGlace, **Type of Appeal** – Report and Recommendations

On January 15, 2001, the Board received a Notice of Appeal from Talisman Energy Inc. ("Talisman") with respect to the refusal of the Inspector to issue a reclamation certificate to Talisman for a wellsite and access road on SE 8-74-7 W6M. The Inspector indicated the refusal was due to landscape parameters failing to meet reclamation criteria. In response to the Board's letter of January 31, 2001, the landowner, Mr. Oscar Nordhagen advised the Board that he did not wish to participate in Board proceedings, however, would like to be copied on all correspondence for his information. Also, on February 5, 2001, Talisman advised the Board that the current land occupant, Mr. Peter Eggers, would have an interest in the appeal. In consultation with the parties, the Board held a mediation meeting/settlement conference on March 30, 2001, in Grande Prairie, Alberta. Following productive and detailed discussions, the parties agreed to a continued mediation meeting/settlement conference and site inspection conducted by a non-party expert to be scheduled for June 25, 2001. At the on-site meeting, a resolution evolved. As a result, the Board recommended the Minister of Environment reverse the decision of the Inspector and issue a reclamation certificate to Talisman in accordance with the resolution. The Minister approved the recommendation on August 9, 2001.

Cite as: *Talisman Energy Inc. v. Inspector, Northwest Boreal Region, Alberta Environment.*

01-007

Appellant(s) – Mr. Rod and Ms. Bee Van Metre, **Operator** – County of Vermillion River No. 24, **Location** – Vermillion, **Type of Appeal** – Decision

On January 10, 2001, Mr. Rod and Ms. Bee Van Metre filed a Notice of Appeal with respect to Approval No. 00141216-00-00 issued under the *Water Act* to the County of Vermillion River No. 24, authorizing the exploration of groundwater on SW 34-052-01-W4, subject to conditions. On January 25, 2001, the Board

wrote to the Appellants requesting further clarification with respect to their Notices of Appeal as they did not appear to relate to work authorized by the Approval, but instead related to a licence to divert, that had, to the Board's knowledge, not yet been issued. On January 31, 2001, the Board received a letter from the Approval Holder advising that they were not interested in pursuing exploration of water on SW-34-52-01-W4 and therefore would not require Approval No 00141216-00-00. The Board received confirmation from the Director in a letter dated February 21, 2001, that the Approval had been cancelled and wrote to the Appellants on the same day requesting they confirm whether or not they wished to withdraw their appeal. On March 8, 2001, Board staff spoke with one of the Appellants and advised that the Board would not have jurisdiction to proceed with an appeal unless there was a valid Approval. On March 15, 2001 the Appellants faxed the Board advising that they did not wish to withdraw their appeal. On March 20, 2001, the Board issued a Decision dismissing the appeal on the grounds that it has no jurisdiction to continue as the Approval was cancelled.

Cite as: *Van Metre v. Director Regional Support, Parkland Region, Natural Resources Service, Alberta Environment*, re: *County of Vermillion River No. 24*.

01-008 and 009

Appellant(s) – Ms. Lorna C. McDonald and Mr. Wilmer and Ms. Grace Allen, **Operator** – County of Vermillion River No. 24, **Location** – Vermillion, **Type of Appeal** – Discontinuance of Proceedings

On January 10, 2001, the Environmental Appeal Board received Notices of Appeal from Ms. Lorna McDonald dated January 3, 2001, and Mr. Wilmer and Ms. Grace Allen dated January 2, 2001, with respect to Approval No. 00141216-00-00, issued under the *Water Act*, to the County of Vermillion River No. 24 authorizing the exploration of groundwater on SW 34-052-01-W4, subject to conditions. On January 25, 2001, the Board wrote to the Appellants requesting further clarification with respect to their Notices of Appeal as they did not appear to relate to work authorized by the Approval, but instead related to a licence to divert, that had, to the Board's knowledge, not yet been issued. On January 31, 2001, the Board received a letter from the Approval Holder advising that they were not interested in pursuing exploration of water on SW-34-52-01-W4 and therefore would not require Approval No 00141216-00-00. The Board received confirmation from the Director in a letter dated February 21, 2001, that the Approval had been cancelled. On March 5, 2001, the Board received a letters from the Appellants stating that they wished to withdraw their respective appeals and on March 20, 2001, the Board issued a Discontinuance of Proceedings and closed its file.

Cite as: *McDonald and Allen v. Director, Parkland Region, Natural Resources Service, Alberta Environment*, re: *County of Vermillion River No. 24*.

01-010

Appellant(s) – Kedon Waste Services Ltd. and Lethbridge Regional Landfill Ltd., **Operator** – Kedon Waste Management Ltd. and Lethbridge Regional Landfill Ltd., **Location** – County of Lethbridge, **Type of Appeal** – Decision

On January 17, 2001, Kedon Waste Services Ltd. and Lethbridge Regional Landfill Ltd. filed a Notice of Appeal with respect to Administrative Penalty No. 00/03-BOW-AP-00/34 issued to Kedon Waste Services Ltd. and Lethbridge Regional Landfill Ltd.. The Administrative Penalty was in the amount of \$8,500 for contravening section 213(3) and 173 of the *Environmental Protection and Enhancement Act*. The offences occurred on February 8, 29 and April 1, 2000, at SW-4-10-21-W4M. The Appellants allegedly failed to have moveable windscreens at the landfill, failed to submit information on the 1999 operations of Class II part of the landfill by March 31, 2000, failed to immediately report contravention of Approval 19028-00-04 and disposed waste on the lands of another person without consent. In consultation with the parties, the Board scheduled a hearing for May 2, 2001, in Calgary. Based on the Appellants, the Board agreed to add a second day for the hearing and confirmed the dates as May 2 and 3, 2001. On the second day of the hearing, the parties asked for an adjournment to pursue settlement. The Board granted the adjournment and encouraged the parties to work toward an agreement beginning that afternoon. Several hours later, the parties advised the Board that a settlement had been reached. The Board issued a Decision establishing that Count 2, 3 and 4 were confirmed with penalties of \$1,500.00, \$1,000.00 and \$1,000.00 respectively. Count

5 and 6 were withdrawn and factors are assessed at plus \$500.00, for a total Administrative Penalty of \$4,000.00 including the factor. Lastly, each party shall bear their own costs.

Cite as: *Kedon Waste Services Ltd. and Lethbridge Regional Landfill Ltd. v. Director, Bow Region, Natural Resources Service, Alberta Environment.*

01-011

Appellant(s) – Summer Village of Point Alison, **Operator** – TransAlta Utilities Corporation, **Location** – near the Village of Wabamun, **Type of Appeal** – Discontinuance of Proceedings

On December 28, 2000, and January 2, 3, 4, and 10, 2001, the Environmental Appeal Board (the “Board”) received Notices of Appeal from the following parties (collectively the “Appellants”), Ms. Gwen Bailey and the Summer Village of Point Alison; Enmax Energy Corporation (“Enmax”); Mr. Nick Zon; Mr. Blair Carmichael; Ms. Donna Thomas and the Summer Village of Kapasiwin; Mr. James Paron; His Worship Mayor William Purdy on behalf of the Village of Wabamun; Mr. David Doull; the Lake Wabamun Enhancement and Protection Association (“LWEPA”); and His Worship Mayor C. Gordon Wilson, again, on behalf of the Summer Village of Point Alison (Note: In a letter of February 15, 2001, Point Alison confirmed that His Worship Mayor C. Gordon Wilson would be representing the Summer Village of Point Alison.) with respect to the issuance of Approval 10323-02-00 to TransAlta Utilities Corporation (“TransAlta”) for the operation and reclamation of the Wabamun Thermal Electric Power Plant, in the Village of Wabamun. Upon request by the Board, the Alberta Energy and Utilities Board (AEUB) advised that TransAlta currently held AEUB Approval No. HE 8109 with respect to the Wabamun Power Plant. The Board advised the parties that it would hold an oral preliminary meeting which took place on March 1, 2001, at the Board’s office. At the preliminary meeting, it was determined that the Summer Village of Point Alison was one of the Appellants directly affected by the Approval and was granted standing. On March 13, 14, and 19, 2001, the Board held mediation meetings/settlement conferences, however, as they were unsuccessful, an appeal hearing was scheduled for April 18 and 19, 2001. On March 19, 2001, the Board received a letter from His Worship Mayor Gordon Wilson advising that the Summer Village of Point Alison wished to withdraw their appeal as they have entered into a partnership agreement with TransAlta to rectify and remediate their concerns. As a result, the Board issued a Discontinuance of Proceedings on March 26, 2001 and closed its files.

Cite as: *Summer Village of Point Alison v. Director, Northern East Slopes Region, Environmental Service, Alberta Environment, re: TransAlta Utilities Corporation.*

01-012, 013 and 014

Appellant(s) – Mr. Donald Graham, Ms. Helen Brock and Mr. Barry Cunningham, and Mr. Douglas Brock, **Operator** – Mr. Shawn Morton, **Location** – near Red Deer, **Type of Appeal** – Decision

Alberta Environment issued *Water Act* Approval No. 140153-00-00 to Mr. Shawn Morton for the exploration of groundwater near Red Deer, Alberta for agriculture purposes. The Environmental Appeal Board received Notices of Appeal from Mr. Donald Graham, Ms. Helen Brock and Mr. Barry Cunningham, and Mr. Douglas Brock regarding the Approval. Upon notification from these parties of their Application for Leave to the Court of Appeal with respect to municipal approvals issued for this operation, the Board held the appeals and the applications for a Stay in abeyance pending the decision of the Court of Appeal. However, the Board subsequently received notification from Mr. Shawn Morton that the exploration under the Approval had been complete. The Board then set a schedule for submissions from the parties with respect to the question of whether the appeals are moot given the fact that the work under the Approval was complete. The Board, upon review of the submissions, issued a Decision on March 15, 2002 dismissing the Notices of Appeal for being moot, without merit or not properly before the Board. The Board noted that the parties are free to file Notices of Appeal in relation to the water licence, should it be issued in the future.

Cite as: *Graham et al. v. Director, Parkland Region, Regional Services, Alberta Environment re: Shawn Morton.*

01-015 and 016

Appellant(s) – Mr. Gordon Grant and Ms. Joan Yule, **Operator** – Village of Standard, **Location** – near the Village of Standard, **Type of Appeal** – Decision

On January 29, 2001, Ms. Joan Yule and Mr. Gordon Grant filed Notices of Appeal with respect to Approval No. 00082525-00-00 issued under the *Water Act* to the Village of Standard to maintain existing works, upgrade the water collection system, replace a water supply line and conduct spring supply testing and examinations in SE 21-25-22-W4M. On January 31, the Board received letters from the Operator objecting to the Notices of Appeal in that the appeals did not meet the prescribed timelines and that the Appellants did not file Statements of Concern with the Director. On February 5, 2001, the Board received a letter from the Director also objecting that the appeals were not filed in accordance with the statutory requirements of the *Water Act*. On February 20, 2001, the Board responded to the letters and set a schedule for written submissions to determine if the Notices of Appeal were properly before the Board. After reviewing the written submissions, the Board issued its Decision to dismiss the appeals on May 15, 2001, based on the following grounds: there was no evidence that the Village of Standard's advertisements in the *Drumheller Mail* was uniquely small or hidden, or otherwise improper in that it prevented Statements of Concern to be filed; notice was placed in a manner such that the area coverage was reasonable, "...everyone had a free subscription (rural and urban) to the *Drumheller Mail*...", and lastly, the Board agrees with the Director that statutory prerequisites have been met by the Village of Standard and that no special circumstances exist to extend statutory deadlines.

Cite as: *Grant and Yule v. Director, Bow Region, Natural Resources Service, Alberta Environment*, re: *Village of Standard*.

01-017-032

Appellant(s) – Mr. Louis and Ms. Verna Schafer, Mr. David Hausauer, Mr. Roy Hausauer, Ms. Chryle Bascom, Mr. Ken Benson, Mr. Ivan Hausauer, Mr. Donald Elhart, Ms. Bernice Bonneau, Ms. Aaron Elhart, Mr. Edward Aberle, Mr. Bill Hogg, Mr. Merlen Brost, Mr. Neil Hoff and Mr. Darcy Geigle (collectively known as the "Clearwater Clean Air Advocates" or "CCAA"), Mr. Brian Franz and Mr. Tracy Elhart, **Operator** – B & J Schneider Ranching Ltd., **Location** – County of Cypress, **Type of Appeal** – As listed below

Intervenor requests: Mr. Stanley Weiss, Mr. Garth Felesky, Mr. Brian Ziegenhagel, Mr. Pat Liboiron, Mr. Merle and Ms. Barb Brost, Mr. Edgar and Ms. Olga Hofer, Mr. Mel and Ms. Ardeth Witke, Mr. Ed and Ms. Judy Stock, Mr. Larry Brown, Mr. Leo Pugsley, Mr. Rob and Ms. Bonnie Mather, Mr. Ken Berg, Ms. Bonnie Berg, Mr. Ron and Ms. Patty Roth, Mr. Vern Cook

Overview - From January 21 to February 2, 2001, 16 Notices of Appeal were filed by Mr. Louis and Ms. Verna Schafer, Mr. David Hausauer, Mr. Roy Hausauer, Ms. Chryle Bascom, Mr. Ken Benson, Mr. Ivan Hausauer, Mr. Donald Elhart, Ms. Bernice Bonneau, Ms. Aaron Elhart, Mr. Edward Aberle, Mr. Bill Hogg, Mr. Merlen Brost, Mr. Neil Hoff and Mr. Darcy Geigle (collectively known as the "Clearwater Clean Air Advocates" or "CCAA"), Mr. Brian Franz and Mr. Tracy Elhart with respect to Preliminary Certificate No. 00139098-00-00 issued to B & J Schneider Ranching Ltd. The Preliminary Certificate provides that if conditions of the certificate are met, the certificate holder will be issued a licence which authorizes the use of 21,600 cubic meters of water annually from wells in SE 30-012-03-W4 with priority 2000-08-29-002 for a feedlot operation.

Decision - On June 4, 2001, the Board scheduled a hearing in this matter for June 25, 2001 in Medicine Hat and placed a Notice of Hearing in the *Medicine Hat News* on May 31, 2001. On June 11, 2001, the Board received 18 requests for intervenors (noted above under intervenor requests). Upon reviewing the requests for intervenor status and reviewing the Director's records in this matter, the Board, on June 22, 2001, issued a Decision to grant intervenor status to Mr. Weiss only and dismiss all other requests.

Cite as: *Intervenor Requests: Schafer et al. v. Director, Prairie Region, Natural Resources Service, Alberta Environment*, re: *B and J Schneider Ranching*.

Report and Recommendations – On June 25, 2001, the Board held a hearing on this matter and on July 18, 2001 issued a Report and Recommendations recommending appeals submitted by Messrs. Tracy Elhart and Brian Franz be dismissed as they did not submit written submissions to the Board nor attend the

hearing. The Board also recommended that the Director's decision to issue the Certificate be confirmed, however amendments to the Certificate and Licence would require the Certificate Holder to monitor Mr. Weiss' wells and other minor amendments to promote clarity. Lastly, in accordance with section 91 of the *Environmental Protection and Enhancement Act* confirm the decision of the Director to issue the Certificate, subject to amendments outlined in the Report and Recommendations. The Minister approved the recommendations on August 29, 2001.

Cite as: *Schafer et al. v. Director, Prairie Region, Natural Resources Service, Alberta Environment*, re: *B&J Schneider Ranching*.

01-033

Appellant(s) – Ms. Hilda Hanson on behalf of the River Breakup Task Force, **Operator** – TBG Contracting Ltd., **Location** – near Fort McMurray, **Type of Appeal** – Discontinuance of Proceedings

On February 9, 2001, Ms. Hilda Hanson on behalf of the River Breakup Task Force in Fort McMurray filed a Notice of Appeal dated February 5, 2001, with respect to Approval No. 00144709-00-00 issued under the *Water Act* to TBG Contracting Ltd. The Approval pertained to the construction of an ice bridge on the Athabasca River in NW 28 and NE 29-089-09-W4. On March 6, 2001, the Board wrote to the Appellant requesting further clarification with respect to the appeal, and on March 27, 2001, the Director expressed that he would be willing to participate in a “mediative” process. On April 11, 2001, the Appellant e-mailed the Board listing a number of question with respect to the mediation process and the Board responded to her concerns. On April 19, 2001, the Appellant e-mailed the Board again indicating that “...I have come to the decision not to proceed with the appeal/mediation process because I lack the expertise necessary”. On April 30, 2001, Board staff spoke with the Appellant to clarify her intentions regarding the appeal and on May 1, 2001, the Board received another e-mail from the Appellant advising that she was withdrawing her appeal and that she did not wish to pursue the mediation process this year. As a result, on May 3, 2001, the Board issued a Discontinuance of Proceedings and closed its file.

Cite as: *Hanson v. Director, Northeast Boreal Region, Natural Resources Service, Alberta Environment*, re: *TBG Contracting Ltd.*

01-034

Appellant(s) – Mr. Douglas B. Leschert, **Operator** – Hutterian Brethren Church of Erskine, **Location** – Erskine, **Type of Appeal** – Decision

On February 20, 2001, Mr. Douglas B. Leschert filed a Notice of Appeal with respect to Licence No. 00143247-00-00/*Water Act* issued to the Hutterian Brethren Church of Erskine for the diversion of 2,150 cubic metres of water annually from the well in SW 01-039-21-W4 for the purpose of agricultural (stock water) subject to certain conditions. In response to an April 5, 2001, letter from the Director requesting an abeyance pending a meeting between the Operator and the Appellant for April 10, 2001, the Board granted the request and requested a status report by April 12, 2001, which was later changed to April 20, 2001. Between April 23 and May 16, 2001, the Board and the parties discussed concerns from the meeting and ways to proceed. On May 16, 2001, the Board was informed that an informal meeting between the Director and the Appellant would take place on May 31, 2001, and the Board requested a status report by June 1, 2001. After reviewing correspondence with respect to the meeting, and in consultation with the parties, the Board, on June 14, 2001, advised the parties that it would be proceeding to a preliminary meeting via written submissions on the issue of whether the Notice of Appeal was properly before the Board given Mr. Leschert's concern with the Licence is that he wants to be compensated for any financial loss due to the actions of the Licencee. To date, the Board has not received the Initial Submission from the Appellant. Courier records indicate that the Board's letter of June 14, 2001 was delivered to Mr. Leschert and signed for on June 20, 2001. On June 28, 2001, the Board issued a Decision dismissing the Notice of Appeal for failure to respond to its written request.

Cite as: *Leschert v. Director, Parkland Region, Natural Resources Service, Alberta Environment* re: *Hutterian Brethren Church of Erskine*.

01-035

Appellant(s) – Metis Nation of Alberta Zone II Regional Council, Mr. Henry Desjarlais, Mr. Gabe Cardinal, Mr. Gus Cardinal and Mr. Sam Dumais, **Operator** – AEC Pipelines Ltd., **Location** – near Cold Lake, **Type of Appeal** – Discontinuance of Proceedings

Alberta Environment issued Amending Approval No. 136570-00-01 to AEC Pipelines Ltd. for the construction and reclamation of the Foster Creek pipeline. On February 16, 2001, the Board received a Notice of Appeal from the Metis Nation of Alberta Zone II Regional Council and a number of its members appealing the Amending Approval. Before proceeding to a hearing of the appeal the Board first had to deal with the directly affected status of the Metis Nation of Alberta Zone II Regional Council and also their participation in a process before the Alberta Energy and Utilities Board. The Board set a submission process to deal with the issue of the participation of the Metis Nation of Alberta Zone II Regional Council in the Alberta Energy and Utilities Board process, however, before the submission process was complete, the appeal was withdrawn. Consequently, the Board issued a Discontinuance of Proceedings on December 27, 2001 and closed its file.

Cite as: *Metis Nation of Alberta Zone II Regional Council et al. v. Director, Bow Region, Environmental Service, Alberta Environment re: AEC Pipelines Ltd.*

01-036

Appellant(s) – DVP Purchase Corp., **Operator** – DVP Purchase Corp., **Location** – Westlock, **Type of Appeal** – Discontinuance of Proceedings

On March 12, 2001, the Environmental Appeal Board (“the Board”) received a Notice of Appeal from DVP Purchase Corp. with respect to the issuance of Administrative Penalty No. 01/01-NES-AP-01/01 (“the Penalty” issued to DVP Purchase Corp. The Penalty was in the amount of \$29,500.00 pertaining to a list of offences occurring between May 10, 1999 to May 1, 2000. The Notice of Appeal objected to the “[l]iability and Quantum respecting every item referred to in the Details of the Notice of Administrative Penalty”. On April 2, 2001, the Board received a letter from the Appellant advising they would be willing to meet with the Director to expedite issues surrounding the appeal or resolve the appeal through the use of mediation prior to a hearing taking place. On April 10, 2001, the Director advised the Board that a formal mediation would not be helpful in resolving the issues of this appeal. On April 27, 2001, the Board received a letter from the Appellant advising that the Penalty had been paid and that the appeal would be withdrawn. As a result, on April 30, 2001, the Board issued a Discontinuance of Proceedings and closed its file.

Cite as: *DVP Purchase Corp. v. Director, Northern East Slopes Region, Alberta Environment.*

01-037

Appellant(s) – Mr. Harry Proft, **Operator** – Her Majesty the Queen in Right of Alberta, **Location** – near Barrhead, **Type of Appeal** – Decision

On November 16, 2000, Approval No. 00140706-00-00 was issued under the *Water Act* by Alberta Environment to Her Majesty the Queen in Right of Alberta to authorize the construction of a coffer dam and replacement of the spillway of the Tiger Lily Lake Outlet Structure. The Approval incorrectly referred to land location NE 31-59-5-W5M, however, the plan attached to the Approval showed the correct, adjoining land location as SE 31-59-5-W5M. On February 7, 2001, the Director issued Amending Approval 00140706-00-01 under the *Water Act* which corrected the legal land description in the Approval. On March 28, 2001, the Board received a Notice of Appeal from the Office of the Farmer’s Advocate of Alberta, on behalf of Mr. Harry Proft. The appeal referred to the Appellant’s land, NE 31-59-5-W5M and with respect to changes to the lease regarding the original project, failure to give notice or obtain input from the landowner, failure to provide proper notice that would have permitted an appeal, and requested compensation for the loss of time and use of property associated with the project. Since the appeal was filed outside the prescribed time limits, and considering the appeal’s merits, the Board analysed the areas of timeliness, mootness and appeal of the Amending Approval. The Board concluded that it is not satisfied that sufficient grounds exist to extend the prescribed time limit for filing a Notice of Appeal under the *Water Act*, and on October 1, 2001, issued a Decision to dismiss the Appeal pursuant to section 87(5)(a) of the

Environmental Protection and Enhancement Act, either because it is not properly before the Board, it is moot, or it is without merit.

Cite as: *Proft v. Director, Licensing and Permitting Standards Branch, Environmental Assurance, Environmental Operations Division, Alberta Environment*, re: *Her Majesty the Queen in Right of Alberta*.

01-038

Appellant(s) – Mr. Ove Minsos, Q.C., **Operator** – Summer Village of Grandview, **Location** – Pigeon Lake, **Type of Appeal** – Discontinuance of Proceedings

On March 30, 2001, the Board received a Notice of Appeal from Mr. Ove Minsos, Q.C., with respect to Approval No. 00145483-00-00 issued under the *Water Act* to the Summer Village of Grandview to carry out shoreline protection works at Pigeon Lake adjacent to Lots P, 1, 2 and 3, Block 6, Plan No. 5045KS, and Lot P, Block 4, Plan 4173KS, all in SE 27-46-01-W5. On May 31 and July 5, 2001, the Board received requests to place the appeal in abeyance pending discussions and information-sharing between the parties. On September 6, 2001, the Appellant advised he wished to proceed with the appeal and requested costs. In consultation with the parties, the Board held a mediation meeting/settlement conference on October 31, 2001 in Edmonton. Following detailed discussions, the parties agreed to continue discussions and would provide the Board with a status report by November 16, 2001. On November 13, 2001, the Appellant wrote to the Board withdrawing the appeal. As a result, the Board issued a Discontinuance of Proceedings on November 23, 2001, and closed its file.

Cite as: *Minsos v. Director, Parkland Region, Regional Services, Alberta Environment*
re: *Summer Village of Grandview*.

01-039

Appellant(s) – Mr. Lawson Patten, **Operator** – Petro-Canada and Enerplus Resources Corporation, **Location** – County of Wetaskiwin, **Type of Appeal** – Decision

On April 19, 2001, Mr. Lawson Patten filed a Notice of Appeal with respect to Enforcement Order No. 2001-WA-02 issued under the *Water Act* to Petro-Canada and Enerplus Resources Corporation to restore natural drainage flows on the Patten and Szkaluba properties. On April 24, 2001, the Board wrote to the Appellant advising that only the person to whom the enforcement order is directed may file an appeal and also noted that an appeal of an enforcement order must be filed no later than 7 days after receipt of a copy of the enforcement order. Although the Appellant is the registered landowner, it is only the recipient of the enforcement order who has the right of appeal. As a result, the Board determined the appeal to be not properly before the Board and expressed that whether or not there should be appeals from landowners whose property is affected by the enforcement orders is a matter for legislators to address. The Appellant expressed many concerns regarding natural drainage on his property. The Board issued a Decision on May 10, 2001, concluding that although it did not have jurisdiction to address the quality or type of work contemplated under the Enforcement Order 2001-WA-02, it expects that, as a courtesy, the Director will work with the Appellant to address these concerns.

Cite as: *Patten v. Director, Red Deer Management Area, Parkland Region, Alberta Environment*,
re: *Petro-Canada and Enerplus Resources Corporation*.

01-040 and 01-041

Appellant(s) – Ms. Sheila Mizera, Mr. Rudy Mizera, Ms. Gertie Mizera, Mr. Terry Mizera, Ms. Fay Mizera and Mr. Horst and Mr. Walter Glombick, **Operator** – Village of Ryley, **Location** – Village of Ryley, **Type of Appeal** – Discontinuance of Proceedings

The Board received Notices of Appeal from Ms. Sheila Mizera on behalf of herself and Ms. Gertie and Mr. Rudy Mizera on April 20, 2001, from Mr. Terry and Ms. Fay Mizera on April 24, 2001, and from Mr. Horst Glombick on April 27, 2001, appealing *Water Act* Approval No. 0014349-00-00, issued to the Village of Ryley. The Board also received Stay applications from Ms. Sheila Mizera and Mr. Horst Glombick. The Board held a mediation meeting on May 7, 2001, at which the parties reached an interim

agreement, and agreed that the appeals would be held in abeyance for further discussion. Once the abeyance period expired, the parties reached a second interim agreement, agreeing to continue further discussions with a view towards a resolution of the appeals. On October 28, 2003, the Board received a letter from Ms. Sheila Mizera on behalf of Ms. Sheila Mizera, Mr. Rudy and Ms. Gertie Mizera, and Mr. Terry and Ms. Fay Mizera withdrawing their appeals. As a result, the Board issued a Discontinuance of Proceedings on November 3, 2003, and closed its file.

Cite as: *Mizera v. Director, Central Region, Regional Services, Alberta Environment re: Village of Ryley* (3 November 2003), Appeal Nos. 01-040 and 01-041-DOP (A.E.A.B.)

01-042

Appellant(s) – Mr. Stanley Weiss, **Operator** – B & J Schneider Ranching, **Location** – Medicine Hat, **Type of Appeal** – Decision

On April 24, 2001, Mr. Stanley Weiss filed a Notice of Appeal with respect to Preliminary Certificate No. 00139098-00-00 issued under the *Water Act* to B & J Schneider which authorizes the use of 21,600 cubic meters of water annually from wells in SE 30-012-03-W4 with priority 2000-08-29-002. The Appellant asked to be added to the appeal which had already been filed by sixteen separate Appellants (collectively known as the “Clearwater Clean Air Advocates” or “CCAA”) on February 2, 2001. On April 30, 2001, the Board wrote to the Appellant for clarification and also noted that the Appellant did not appear to file a Statement of Concern, a requirement under section 115(1)(b) under the *Water Act*, with the Director. On May 14, 2001, after receiving additional information from the Appellant, the Board issued a Decision dismissing the appeal and concluded that the circumstances indicated by the Appellant for not filing a Statement of Concern are not special or compelling nor do they indicate an intent to file at any time in the past.

Cite as: *Weiss v. Director, Prairie Region, Alberta Environment, re: B and J Schneider Ranching.*

01-043

Appellant(s) – Mr. Horst Glombick, **Operator** – Village of Ryley, **Location** – Village of Ryley, **Type of Appeal** – Discontinuance of Proceedings

The Board received Notices of Appeal from Ms. Sheila Mizera on behalf of herself and Ms. Gertie and Mr. Rudy Mizera on April 20, 2001, from Mr. Terry and Ms. Fay Mizera on April 24, 2001, and from Mr. Horst Glombick on April 27, 2001. The Board also received Stay applications from Ms. Sheila Mizera and Mr. Horst Glombick. In agreement with the parties, the Board held a mediation meeting on May 7, 2001, in Edmonton at which the parties reached an interim agreement, and agreed that the appeals would be held in abeyance for further discussion. Once the abeyance period expired, the parties reached a second interim agreement, agreeing to continue further discussions with a view towards a resolution of the appeals. A letter of withdrawal was received from Mr. Horst Glombick. The Board therefore issued a Discontinuance of Proceedings regarding Mr. Glombick’s appeal only and closed its files.

Cite as: *Glombick v. Director, Central Region, Regional Services, Alberta Environment, re: Village of Ryley* (29 May 2003), Appeal No. 01-043-DOP (A.E.A.B.).

01-044

Appellant(s) – Messrs. Brian and Nick Hunka, **Operator** - Highland Feeders Ltd., **Location** – Vegreville, **Type of Appeal** – Report and Recommendations

On April 30, 2001, the Board received a Notice of Appeal from Messrs. Brian and Nick Hunka with respect to Licences 00139015-00-00 (WTH 2-98) and 00139016-00-00 (WTH 4-98), issued under the *Water Act* to Highland Feeders Ltd., which authorize the annual diversion of 73,000 cubic metres of water from the well in SW 26-054-14-W4 and 76,650 cubic metres of water from the well in SE 24-054-14-W4 respectively, for the purpose of agriculture (a feedlot) subject to certain terms and conditions. In response to a request from the Licence Holder to hold a meeting between the parties to mediate a resolution, the Board requested that dates be provided for a potential mediation meeting/settlement conference. The Appellants advised they would be amenable to mediation, however, later advised they would like to pursue mediation with the exception of the Licence Holder. The Board advised the parties that mediation must involve open dialogue

between all parties and as a result, advised that a hearing would take place instead. In consultation with the parties, the Board scheduled a hearing for August 28, 2001. On July 26, 2001, the Board acknowledged two emails from the Director to the Appellants with respect to pursuing discussions. On July 26, 2001, the Board responded to a letter from Mr. Shawn Munro, advising that he had been retained to act on behalf of the Appellants and that the Appellants were willing to fully participate in a mediation meeting with all of the parties. In consultation with the parties, the Board scheduled a mediation meeting/settlement conference for August 13, 2001, however, later rescheduled it to August 21, 2001 at the Board's office in Edmonton. At the mediation meeting, a resolution was reached by the parties and the Board issued a Report and Recommendation on August 31, 2001, recommending that the Minister of Environment vary the Licences in accordance with the resolution. On September 6, 2001, the Minister approved the recommendations.

Cite as: *Hunka v. Director, Water Management Division, Natural Resources Service, Alberta Environment*, re: *Highland Feeders Ltd.*

01-045, 046 and 047

Appellant(s) – Mr. James Paron, Mr. David Doull and Mr. Dan Sorochan, **Operator** – Parkland County, **Location** – near the Village of Wabamun, **Type of Appeal** – Decision

On May 4 and 7, 2001, the Board received Notices of Appeal from Mr. James Paron, and from Mr. David Doull on behalf of himself and on the same day on behalf of Mr. Dan Sorochan with respect to Approval No. 00137322-00-00 issued under the *Water Act* to Parkland County authorizing weed control and the reestablishment of Ascot Beach at SW 09-053-04-W5M on Lake Wabamun. The Appellants object to various decisions made by Parkland County that the Approval should not have been granted as individual property owners have been turned down for similar approvals in the past and that the authorized work under the Approval will increase the number of people using the area. The Notices of Appeal also advised that Mr. Doull would be representing all of the Appellants in this matter. In response to the Board's letter of May 7, 2001, requesting the parties provide comments on whether the Appellants are directly affected, the Board reviewed the information presented by the Director and Approval Holder. After considering all submissions, the Board concluded that the Appellants did not present any evidence beyond a bare statement that they live in proximity to the proposed work – which speaks to the environmental impacts of the work authorized under the Approval. The Appellants have failed to present facts which demonstrate they are directly effected. As a result, the Appellants have failed to discharge the onus that is on them to demonstrate that they are directly affected. On August 1, 2001, the Board issued a Decision to dismiss the appeal on the grounds that the Appellants are not directly affected pursuant to section 115 of the *Water Act*.

Cite as: *Paron et al. v. Director, Environmental Service, Northern East Slopes Region, Alberta Environment*, re: *Parkland County*.

01-048

Appellant(s) – Ms. Zena Moisy, **Operator** – Ms. Zena Moisy, **Location** – near Lac La Biche, **Type of Appeal** – Discontinuance of Proceedings

On May 17, 2001, Ms. Zena Moisy filed a Notice of Appeal with respect to Enforcement Order No. 2001-WA-05/*Water Act*, issued to Ms. Moisy for the placement of rocks and material on the shore and reserve of Lac La Biche, without an approval. On May 24, 2001, the Board received a letter from the Director advising that he would be meeting with the Appellant on May 25, 2001, to discuss her concerns in more detail. On May 30, 2001, the Board received a letter from the Appellant advising that as a result of the meeting, she wished to “call off” the appeal. As a result, the Board issued a Discontinuance of Proceedings on May 31, 2001, and closed its file.

Cite as: *Moisey v. Director, Enforcement and Monitoring, Northeast Boreal Region, Alberta Environment*.

01-049

Appellant(s) – Lake Wabamun Enhancement and Protection Association (LWEPA), **Operator** – TransAlta Utilities Corporation, **Location** – County of Parkland, **Type of Appeal** – Decision

On April 27, 2001, Alberta Environment issued Amending Approval 9830-01-10 under the *Environmental Protection and Enhancement Act* to TransAlta Utilities Corporation for the Sundance Power Plant, in the County of Parkland, Alberta. The Board received a Notice of Appeal from the Lake Wabamun Enhancement and Protection Association (LWEPA) on May 23, 2001 appealing the Amending Approval. A mediation meeting and settlement conference was held which failed to resolve the appeal and after several abeyances LWEPA requested that their appeal proceed. The Board subsequently received a request from Alberta Environment to dismiss the appeal because the issues raised in the Notice of Appeal do not relate to the Amending Approval that is being appealed. LWEPA states concerns with inadequate provisions for regulating water and objects to Alberta Environment's failure to incorporate provisions into the Amending Approval for the Sundance Power Plant (9830-01-10) for regulating water, similar to section 4.3.27 of the Approval for TransAlta's Wabamun Lake Power Plant (10323-02-00). Section 4.3.27 of the Approval for the Wabamun Lake Power Plant requires TransAlta to apply to increase the capacity of the Wabamun Lake Water Treatment Plant. (The Board previously heard appeals relating the Wabamun Lake Power Plant that dealt with section 4.3.27 and the Board currently has before it appeals relating to the Wabamun Lake Water Treatment Plant.) The Board decided to conduct a preliminary meeting via written submissions to address the motion by Alberta Environment to dismiss the appeal. Written submissions were received from all parties and the Board, in its Decision of May 10, 2002, concluded that the Notice of Appeal is either moot, without merit or not properly before the Board as there would be no effect achieved by adding a requirement to the Amending Approval that is the subject of this appeal to oblige TransAlta to apply for increased capacity of the Wabamun Lake Water Treatment Plant given that TransAlta has already applied for and received such an approval under the *Environmental Protection and Enhancement Act* and a licence under the *Water Act*.

Cite as: *Lake Wabamun Enhancement and Protection Association v. Director, Northern East Slopes Region, Environmental Service, Alberta Environment re: TransAlta Utilities Corporation*.

01-050, 052 and 054, 055

Appellant(s) – Mr. Tom and Mrs. Mae Adamyk, Mr. Lawrence and Mrs. Evelyn Kucy, Mr. Ted Jakubowski and Mr. Jason Lewyk, **Operator** – Cam-A-Lot Holdings, **Location** – near St. Michael, **Type of Appeal** – As listed below

Overview - The Board received Notices of Appeal and a request for a Stay on May 23, 2001, from Mr. Tom and Mrs. Mae Adamyk on May 28, 2001, from Mr. Lawrence and Mrs. Evelyn Kucy, and from Mr. Ted Jakubowski and Mr. Jason Lewyk, President of the St. Michael Trade and Water Supply Ltd. on May 30, 2001 with respect to Approval No. 00147901-00-00 issued to Cam-A-Lot Holdings to explore for groundwater at SW 17-056-18-W4.

Stay Decision – In their Notice of Appeal, the Kucys and Mr. Lewyk stated they wanted the exploration stopped. The Board also received a letter from the Adamyks requesting a Stay. In response to letters from the Board on June 5, and 6, 2001, Mr. Lewyk, on behalf of the Adamyks, Mr. Kucy and himself confirmed they were seeking a Stay of the Director's decision to issue the Approval until the appeal is heard. After reviewing the submissions provided by the Appellants, the Board issued a Decision on July 9, 2001, advising that the Appellants have not satisfied the Board that a Stay should be granted and noted that this is not a decision on the merits of the appeal.

Cite as: *Adamyk et al. v. Director, Environmental Service, Parkland Region, Alberta Environment, Stay decision, re: Cam-A-Lot Holdings*.

Decision - On June 15, 2001, the Board dismissed Mr. Jakubowski's request for a Stay for failing to comply with a written notice pursuant to section 87(5)(a)(ii) of the *Environmental Protection and Enhancement Act*. For reasons stated in the Board's Decision dated July 9, 2001, the requests for a Stay filed by Mr. Tom and Mrs. Mae Adamyk and Mr. Lawrence and Mrs. Evelyn Kucy were denied. In response to a letter from the Board, the Director advised that the exploration for groundwater has been completed, however had not been submitted to the Director. The Director also advised the Approval Holder failed to comply with the Approval and would be issued an Enforcement Order requiring it to cease diverting water from the exploration well. On September 18, 2001, the Board received a letter from the

Director advising the Approval Holder withdrew its application for a licence to divert water. In response to the Director's letter, the Board advised it wished to dismiss the appeals based on section 87(5)(a) and offered the parties an opportunity to object. Since no objections were received by the Board, on October 1, 2001, the Board issued a Decision to dismiss the appeals as they are either moot, not properly before the Board or without merit.

Cite as: *Adamyk et al. v. Director, Environmental Service, Parkland Region, Alberta Environment, re: Cam-A-Lot Holdings.*

01-051, 053 and 056

Appellant(s) – Vant Erve Dairy Ltd., Mr. Ashley and Ms. Dorothy Heggelund, and Mr. Robert Hill, **Operator** – D. Ray Construction Ltd., **Location** – near Beaverlodge, **Type of Appeal** – Discontinuance of Proceedings

Alberta Environment issued Approval No. 00150120-00-00 under the *Water Act* to D. Ray Construction Ltd., which authorized the draining of groundwater from a gravel pit near Beaverlodge, Alberta. The Environmental Appeal Board received three appeals opposing the Approval. The Board conducted a number of mediation meetings and settlement conferences in an effort to assist the parties in resolving their appeals. At the mediation meetings and settlement conferences the parties agreed to continue discussions to resolve the appeals. After seven extensions had been granted at the request of the parties to continue settlement discussions, it appeared to the Board that the parties were still unable to reach a resolution. Therefore, the Board scheduled a hearing for March 13, 2002, in Grande Prairie, Alberta, to hear the appeals. On March 6, 2002, the Appellants withdrew their appeals and the Board issued a Discontinuance of Proceedings on March 20, 2002.

Cite as: *Vant Erve Dairy Ltd. et al. v. Director, Northwest Boreal Region, Regional Services, Alberta Environment re: D. Ray Construction Ltd.*

01-055

Appellant(s) – Mr. Jason Lewyk, President of St. Michael Trade and Water Supply Ltd., **Operator** – Cam-A-Lot Holdings, **Location** – near St. Michael, **Type of Appeal** – Decision

Decision – Upon reviewing the Records submitted by the Department, it appeared to the Board that the Appellant had not filed a Statement of Concern with the Director prior to filing his Notice of Appeal. The Appellant explained that the Statement of Concern filed was received after the Approval to explore for groundwater had been issued, and as a result, had been accepted as a Statement of Concern with respect to the application for the Licence to divert (a decision with respect to the Licence to divert had not yet been made). After reviewing the written submission of the Appellant, the Board issued a Decision on July 17, 2001 advising that since the Appellant did not file the Statement of Concern in relation to the application for the Approval to explore for groundwater, the Notice of Appeal was not properly before the Board and pursuant to section 87(5)(a)(i.2) of the *Environmental Protection and Enhancement Act*, the Board dismissed the appeal.

Cite as: *St. Michael Trade and Water Supply Ltd. v. Director, Environmental Service, Parkland Region, Alberta Environment, re: Cam-A-Lot Holdings.*

01-057

Appellant(s) – Mr. William Yakimishyn, **Operator** – Mr. William and Mr. Kelly Yakimishyn, **Location** – Lamont, **Type of Appeal** – Report and Recommendations

On June 18, 2001, the Board received a Notice of Appeal and request for a Stay from Mr. William Yakimishyn with respect to Enforcement Order No. 2001-WA-06 issued to Messrs. William and Kelly Yakimishyn for the placement of earthen berms near intermittent watercourses on their land at NW 4-56-17 W4M in the county of Lamont, Alberta. After reviewing information brought forth by the parties, the Board concluded it did not have sufficient evidence before it from the Appellant to grant a Stay. The Board advised that the evidence provided did not demonstrate that the Appellant would suffer greater harm if the Stay was refused than others would if the Stay was granted. On June 18, 2001, the Board advised the parties that a hearing on the merits of the appeal would take place on June 22, 2001, however, was

cancelled and rescheduled to take place on August 16, 2001 at the Board's office in Edmonton. On August 9, 2001, the Board received a request for intervenor status from Mr. Alex Stelmach. After receiving no objections from the parties and determining that Mr. Alex Stelmach would materially assist the Board with respect to the appeal and that he has a tangible interest in the subject matter of the appeal, the Board granted Mr. Stelmach full intervenor status giving him the same rights as a party. At the August 16, 2001, hearing, and after reviewing the evidence brought forth by the parties, the Board concluded that it had jurisdiction to review this case and that the Appellant had conducted an activity in contravention of section 36(1) of the *Water Act*. The Board therefore, found the Order valid and issued a Report and Recommendations on September 14, 2001, recommending the Minister of Environment confirm the Order and dismiss the appeal. On September 27, 2001, the Minister approved the recommendations.

Cite as: *Yakimishyn v. Director, Enforcement and Monitoring, Parkland Region, Regional Services, Alberta Environment.*

01-058

Appellant(s) – Summer Village of Gull Lake, **Operator** – Summer Village of Gull Lake, **Location** – Gull Lake, **Type of Appeal** – Discontinuance of Proceedings

On June 19, 2001, the Board received a Notice of Appeal from Mr. Alexander D. Lytle of Lytle Fisher on behalf of the Summer Village of Gull Lake with respect to the decision of the Director to refuse the Summer Village of Gull Lake's application to amend Approval No. 00138869-00-00. The Approval was issued under the *Water Act* for the construction of community beach areas in Gull Lake located on NW 22, NE 22, SW 26 and SE 27-040-28 and the appeal is with respect to the removal of weeds which would have a negative effect on the fisheries habitat in Gull Lake. In consultation with the parties, the Board held the appeal in abeyance pending discussions between the parties and potential resolution of the appeal. On August 15, 2001, the Appellant advised the Board that a resolution had been reached and that he would be withdrawing his appeal. As a result, on August 21, 2001, the Board issued a Discontinuance of Proceedings and closed its file.

Cite as: *Summer Village of Gull Lake v. Director, Water Management, Parkland Region, Regional Services, Alberta Environment.*

01-059

Appellant(s) – Ronald Pernarowski, **Operator** – Imperial Oil Resources, **Location** – Cold Lake, **Type of Appeal** – Discontinuance of Proceedings

Alberta Environment issued *Water Act* Approval No. 00148301-00-00 to Imperial Oil Resources authorizing the diversion of water for the purpose of industrial injection from wells near Cold Lake, Alberta. The Board received notices of appeal from Mr. Ronald Pernarowski, and from Ms. Sally Ann Ulfsten of Stop and Tell Our Politicians Society (STOP). In consultation with the parties, the Board held a mediation meeting/settlement conference in Cold Lake, Alberta on August 14, 2001. An Interim Agreement was reached at the mediation and the parties agreed to an abeyance of these appeals in order for the parties to work towards a resolution of the issues. Conference calls were subsequently held between the parties and the Mediator to assist the parties in determining the outstanding issues, with a view to resolving the appeals. During the conference calls it became apparent that although Mr. Pernarowski was close to an agreement with Imperial Oil, while, Ms. Ulfsten had a number of outstanding issues, and wished to proceed to a hearing. Therefore, Ms. Ulfsten's appeal is now proceeding independently from Mr. Pernarowski's appeal. As a result of a further mediation via teleconference, the appeal of Mr. Pernarowski was resolved and the appeal withdrawn. The Board issued a Discontinuance of Proceedings on February 28, 2002.

Cite as: *Pernarowski v. Regional Director, Northern Region, Regional Services, Alberta Environment, re: Imperial Oil Resources.*

01-060

Appellant(s) – Deneschuk Homes Ltd., **Operator** – Town of Sylvan Lake, **Location** – Sylvan Lake, **Type of Appeal** – Decision

On May 15, 2001, Amending Approval No. 1206-01-06 was issued to the Town of Sylvan Lake for the operation of a wastewater treatment plant (Class I), a wastewater collection system (Class II), and a storm drainage system. On June 21, 2001, the Board received a Notice of Appeal from Deneschuk Homes Ltd. stating that the Notice of Application misstated the type of facility for which the Amending Approval was sought. The Appellant indicated that it had not filed a Statement of Concern as it misunderstood the Notice of Application as published in the *Sylvan Lake News* by the Approval Holder. Given that the Appellant did not file a Statement of Concern, the Board needed to decide if the Notice of Appeal was properly before it. After considering all information brought forth, the Board advised the parties that it believed the Appellant intended to file a Statement of Concern, however, it did not take all reasonable steps to express this intent. On September 6, 2001, the Board issued a Decision to dismiss the appeal on the basis that the Appellant did not formally submit a Statement of Concern and that there is no justifiable reason for the Board to exercise its discretion to exempt the Appellant from this requirement.

Cite as: *Deneschuk Homes Ltd. v. Director, Approvals, Parkland Region, Regional Services, Alberta Environment*, re: *Town of Sylvan Lake*.

01-061

Appellant(s) – Stop and Tell Our Politicians Society (STOP), **Operator** – Imperial Oil Resources, **Location** – near Cold Lake, **Type of Appeal** – Decision

Alberta Environment issued *Water Act* Licence 00148301-00-00 to Imperial Oil Resources authorizing the diversion of 2,920,000 cubic meters of water for the purpose of industrial injection from wells in LSD 05-22-65-W4M, near Cold Lake, Alberta. The Board received a Notice of Appeal from the Stop and Tell Our Politicians Society (STOP) on June 26, 2001. In consultation with the parties to this appeal, the Board held a mediation meeting and settlement conference in Cold Lake. An Interim Agreement was reached at the mediation and the parties agreed to work towards a resolution of the appeal. The Interim Agreement provided in part: “All parties to the appeals have agreed that the appeals be held in abeyance until November 30, 2001, while the following terms and conditions are addressed: 1. Imperial Oil Resources will develop a proposal for a workshop to address the relevant groundwater and potable water issues of the Appellants [(STOP)]. The workshop details will be reviewed by the Appellants, and if acceptable, the appeals will be withdrawn.” Following the workshop contemplated in the Interim Agreement, it became apparent that STOP had a number of outstanding issues and wished to proceed to a hearing. During the process of determining the preliminary issues of standing, jurisdiction of the Board, and the issues to be considered at the hearing, a dispute arose as to whether STOP’s Notice of Appeal had in fact been withdrawn pursuant to the Interim Agreement. The Board requested submissions on the questions of whether STOP’s Notice of Appeal had been withdrawn and whether the Board had jurisdiction to proceed with the appeal. Having considered the submissions of the parties, the Interim Agreement, and all of the evidence before it, the Board has determined that STOP’s Notice of Appeal has been withdrawn, that the Board does not have jurisdiction to proceed with the appeal, and that the Board is required to dismiss this appeal and discontinue its proceedings in this matter. The Board issued its Decision in this regard on June 14, 2002.

Cite as: *Stop and Tell Our Politicians Society (STOP) v. Director, Northern Region, Regional Services, Alberta Environment*, re: *Imperial Oil Resources*.

01-062

Appellant(s) – Imperial Oil Limited and Devon Estates Limited, **Operator** – Imperial Oil Limited and Devon Estates Limited, **Location** – Calgary, **Type of Appeal** – As listed below

Overview – Imperial Oil Limited and Devon Estates Limited (“the Appellants”) filed a Notice of Appeal with the Board on July 3, 2001, with respect to Environmental Protection Order #EPO-2001-01 (the “EPO”), issued to the Appellants for the Lynnview Ridge residential subdivision. The EPO states that Imperial Oil ran an oil refinery on the lands that are now the subdivision between 1923 and 1975 and that the majority of lands were transferred to Devon Estates who developed them in conjunction with another company. The EPO also states that analytical results included in a May 2001 draft report indicate that “...numerous high hydrocarbon vapour concentrations [were] confirmed...” and that “...a number of soil

samples taken for lead analysis...ranged over 1200mg/kg, and therefore exceed the Canadian Council of Ministers of Environment soil limit of 140mg/kg.”

Decision – The purpose of this Decision is to determine which matters included in the Notice of Appeal will be included in the hearing of the appeal. Authorized under section 87(2), (3), and (4) of the Environmental Protection and Enhancement Act, the Board issued a Decision on August 22, 2001, determining that the following issues would be included: 1. Are the Appellants persons responsible under section 102? This question is limited to the issues of whether section 102 has retroactive effect. 2. Has there been a release within the meaning of section 1(ggg) having regard to its ‘historical nature’ and has this release caused an adverse effect? 3. Does the Director have the discretion to choose between issuing an EPO under section 102 and issuing an EPO under section 114 and was that discretion exercised properly? and, 4. Did the Director exercise his discretion unreasonably by not naming others known to the Director as persons responsible under the EPO?.

Cite as: *Imperial Oil Limited v. Director, Enforcement and Monitoring, Bow Region, Regional Services, Alberta Environment.*

Decision – In consultation with the parties, the Board set a hearing on September 12, 13 and 14, 2001, in Calgary. However, the hearing was rescheduled and took place on October 16, 17 and 18, 2001. On September 11, 2001, the Director wrote the Appellants a letter indicating it was a “Decision on Conceptual Framework for Remediation at Lynnview Ridge”. On September 12, 2001, the Director provided an additional letter to the Appellants. On September 18, 2001, the Appellants submitted a second Notice of Appeal to the Board with respect to the September 11 and 12 letters. On September 19, 2001, the Board sent letters to the parties requesting submissions on the second Notice of Appeal. The motions were: 1. Should the Board accept the new Notice of Appeal?, 2. Should the Board accept an amendment to the original Notice of Appeal?, 3. Should the Board add a new issue for the purposes of deciding the appeal? and 4. Document Production. On October 26, 2001, the Board issued a Decision that the following issue would be included in the hearing of the appeal: Issue 5: Is the EPO reasonable and sufficiently precise in the circumstances up to the date of the hearing. The Board also confirmed its previous direction regarding how the document production issue would be addressed.

Cite as: *Preliminary Motions: Imperial Oil Limited v. Director, Enforcement and Monitoring, Bow Region, Regional Services, Alberta Environment.*

Decision – This Decision is with respect to two applications for document production. The Board has the power to order a witness to attend and produce documents at a hearing, pursuant to sections 3 and 4 of the Public Inquiries Act. For the Board to order the attendance of a witness and the production of documents, the Board must be satisfied that the evidence is potentially relevant and necessary to the issues that will be considered at the hearing of the appeal. On December 10, 2001, the Board issued a Decision to order Imperial Oil, the City of Calgary (an intervenor in this appeal), and the Director to provide witnesses and produce documents that the Board believes are potentially necessary and relevant to the issues before the Board in this appeal that are subject to certain general conditions. In its decision, the Board also took into consideration concerns expressed by the parties with respect to ensuring the search for the ordered documents is conducted properly and completely, that the document issues be brought to a close as soon as possible and that the parties provide documents within the timelines specified in the agreement.

Cite as: *Document Production Motions: Imperial Oil Limited v. Director, Enforcement and Monitoring, Bow Region, Regional Services, Alberta Environment.*

Report and Recommendations – On October 16-18, 2001 and February 5 and 6, 2002, the Board undertook an extensive hearing and received volumes of legal, technical and scientific information regarding the appeal from the parties. Taking all information into account, the Board provided the following recommendations to the Minister in that he should: 1. confirm Alberta Environment’s decision to issue the “substance release” EPO; 2. confirm Alberta Environment’s decision not to name parties other than Imperial Oil and Devon Estates in the EPO; 3. confirm that Alberta Environment’s decision to issue the EPO was reasonable and sufficiently precise so as to provide a proper foundation for the implementation direction to require the removal of soils containing greater than 140 ppm of lead between 0.3 metres and 1.5 metres; 4. confirm that Alberta Environment’s decision to issue the EPO was reasonable and sufficiently precise so as to provide a proper foundation for the implementation direction to require the

removal of 0.3 metres of soil under decks, fences, gardens , shrubs, and tree; 5. vary the EPO to make it clear that the implementation direction to remove 0.3 metres of soil under driveways, patios, and sidewalks on private property where they provide an effective barrier to the lead in the soil is not within the scope of the EPO; 6. vary the EPO to require that the work under the EPO shall be performed to the satisfaction of the Director; and 7. direct Alberta Environment to continue to apply the “substance release” EPO and, if new evidence supports it, to apply a “contaminated site” EPO. The Minister agreed to the Board’s recommendations on July 22, 2002.

Cite as: *Imperial Oil Ltd. and Devon Estates Ltd. v. Director, Enforcement and Monitoring, Bow Region, Regional Services, Alberta Environment re: Imperial Oil Ltd.*

Intervenor Decision – This Decision is with respect to intervenor requests filed with the Board by Lynnview Ridge Residents Action Committee, Calhome Properties, the City of Calgary, the Calgary Health Region, and Rio Verde Properties (“Rio Verde”). After reviewing the requests, the Board issued a Decision on July 23, 2002, granting full party to status to all parties except for Rio Verde. In the Board’s analysis of the request, it determined that the issues expressed by Rio Verde were already included in the lists of concerns of the other applicants. Hence, Rio Verde would be able to submit a written submission only.

Cite as: *Intervenor Decision: Imperial Oil Limited v. Director, Enforcement and Monitoring, Bow Region, Regional Services, Alberta Environment.*

Stay Decision – This Decision is with respect to a request for a Stay the Board received from Imperial Oil. The Stay was in response to two letters dated September 11 and 12, 2001, issued by Alberta Environment to Imperial Oil. The letters provide further directions in relation to remediation work to be carried out under the EPO. The Board determined Imperial Oil presented a *prima facie* case for a Stay and requested submissions from the other parties to the appeal as to whether a Stay should be granted. After careful review of information presented, on July 23, 2002, the Board issued a Decision advising that even though Imperial Oil had shown there was a serious issue to be determined, it did not convince the Board that a Stay should be granted.

Cite as: *Stay Decision: Imperial Oil Limited v. Director, Enforcement and Monitoring, Bow Region, Regional Services, Alberta Environment.*

Costs Decision - The Board received applications for costs from Calhome Properties, the Calgary Health Region, the Lynnview Ridge Residents Action Committee, and the City of Calgary. After reviewing these applications, and the submissions of all of the parties, the Board issued a Costs Decision on September 8, 2003, and awarded costs to the Lynnview Ridge Residents Action Committee (\$15,540.49) and the City of Calgary (\$46,383.17). These costs are payable by Imperial Oil and Devon Estates. No costs were awarded to the Calgary Health Region as its participation in this appeal was part of its statutory mandate. Further, no costs were award to Calhome Properties as its application for costs was withdrawn during the course of the Board’s deliberations.

Cite as: *Costs Decision: Imperial Oil and Devon Estates (8 September 2003), Appeal No. 01-062-CD (A.E.A.B.).*

01-063

Appellant(s) – Mr. Clinton J. Marr and Spearpoint Cattle Company Ltd., **Operator** – Spearpoint Cattle Company Ltd., **Location** – Pincher Creek, **Type of Appeal** – Decision

On July 10, 2001, the Board received a Notice of Appeal from Mr. Clinton J. Marr and Spearpoint Cattle Company Ltd. with respect to Water Management Order No. 2001-WA-DAM029-PR issued under the *Water Act* to Spearpoint Cattle Company Ltd. (“Spearpoint”). The Order states that Spearpoint must cease diversion of water from Dungarvan Creek at NW 16-003-29-W4 as the senior priority holder has made a claim because Dungarvan Creek is not able to sustain diversion from both the senior and junior priority user. The appeal advises that the Appellants did not own the land in question nor were they given a licence for diversion by the Director. In consultation with the parties, the appeal was held in abeyance pending discussions between the parties and the potential for resolution. On July 30, 2001, the Director advised the Board that he was satisfied that the Appellants are not the subject of the Order. As a result, the Board

requested the Appellants confirm their satisfaction with the meeting and withdraw their appeal. After not responding to the Board's letter and follow-up message left by Board staff on August 13, 2001, the Board issued a Decision on August 21, 2001 dismissing the Notice of Appeal for failure to respond to the Board's written request.

Cite as: *Marr and Spearpoint Cattle Company Ltd. v. Director, Water Management, Prairie Region, Regional Services, Alberta Environment.*

01-064

Appellant(s) – Golden Nodding Acres Owners Association, **Operator** – Golden Nodding Acres Owners Association, **Location** – near Buck Lake, **Type of Appeal** – Discontinuance of Proceedings

On July 12, 2001, the Board received a Notice of Appeal from the Golden Nodding Acres Owners Association with respect to Approval No. 00151305-00-00 issued under the *Water Act* to the Golden Nodding Acres Owners Association for weed removal at NE 20-065-17-W4 of North Buck Lake. In consultation with the parties, the Board scheduled a mediation meeting/settlement conference to be held on August 29, 2001 in Athabasca. The Board later received an e-mail from the Appellant advising that the parties were able to resolve their concerns, and as a result, pursuant to section 87(7) of the *Environmental Protection and Enhancement Act*, the Board issued a Discontinuance of Proceedings on August 30, 2001 and closed its file.

Cite as: *Golden Nodding Acres Owners Association v. Director, Regional Support, Northeast Boreal Region, Alberta Environment.*

01-065

Appellant(s) – Town of Lac La Biche, **Operator** – Town of Lac La Biche, **Location** – Lac La Biche, **Type of Appeal** – Report and Recommendations

On July 13, 2001, the Board received a Notice of Appeal from the Town of Lac La Biche with respect to Table 5-1(2a) and Table 6-1 of Approval No. 911-02-00 issued under the *Water Act* to the Town of Lac La Biche for the construction, operation and reclamation of a waterworks system for the town. In consultation with the parties, the Board held a mediation meeting/settlement conference in the Town of Lac La Biche on September 18, 2001. At the mediation meeting a resolution was reached and as a result, the Board issued a Report and Recommendations on September 28, 2001, recommending the conditions of the Resolution entered into between the parties be approved. The Minister approved the recommendations on October 1, 2001.

Cite as: *Town of Lac La Biche v. Director, Approvals, Northeast Boreal Region, Regional Services, Alberta Environment.*

01-066

Appellant(s) – Joffre Oils Ltd., **Operator** – Joffre Oils Ltd., **Location** – near Okotoks, **Type of Appeal** – Discontinuance of Proceedings

On July 18, 2001, the Board received a Notice of Appeal from the Alberta Orphan Program on behalf of Joffre Oils Ltd. with respect to the June 6, 2001, decision of the Inspector to refuse to issue a reclamation certificate for the Joffre et al Hartell 11-26-19-1 well. On August 22, 2001, the Board received a request for a 60-day abeyance pending discussions between the parties. On October 12, 2001, the Board received a letter from the Appellant advising that the Director now understood the concerns raised and would make every effort to hold an inquiry after the Appellant's application was received, and the Notice of Appeal would be withdrawn. As a result, on October 25, 2001, the Board issued a Discontinuance of Proceedings and closed its file.

Cite as: *Joffre Oils Ltd. v. Inspector, Bow Region, Regional Service, Alberta Environment.*

01-067

Appellant(s) – Mr. Ronald Sackett, **Operator** – PanCanadian Petroleum Ltd., **Location** – near Crossfield, **Type of Appeal** – Discontinuance of Proceedings

On July 30, 2001, Mr. Ronald Sackett filed a Notice of Appeal with respect to Reclamation Certificate No. 39307 issued to PanCanadian Petroleum Ltd. for its well site at SW 33-28-28-W4. The Appellant is the landowner for which the Certificate was issued. On August 10, 2001, the Board received notice from the Certificate Holder that an agreement had been reached by the parties and on August 22, 2001, the Appellant advised the Board that the matter had been settled and he wished to cancel his appeal. As a result, the Board issued a Discontinuance of Proceedings on August 27, 2001 and closed its file.

Cite as: *Sackett v. the Inspector, Bow Region, Regional Services, Alberta Environment*,
re: *PanCanadian Petroleum Limited*.

01-068, 069 and 070

Appellant(s) – Mr. Kenneth A. Matier, Mr. Billie and Mrs. Shirley Borys, and Mr. Nick Supina, **Operator** – Meadowview Sod Farms Ltd., **Location** – near Fort Saskatchewan, **Type of Appeal** – Decision

On July 31, 2001, the Board received Notices of Appeal and requests for Stays from Mr. Kenneth Matier, Mr. Billie and Mrs. Shirley Borys, and Mr. Nick Supina with respect to Approval No. 00151115-00-00 issued under the *Water Act* to Meadowview Sod Farms Ltd. for the exploration of groundwater at SE 04-054-22-W4. Subsequently, Amending Approval No. 00151115-00-01 was issued to correct the location of the exploration to SE 09-054-22-W4. The exploration was in support of two *Water Act* licence applications for the Fox Run Golf course and for diverting water from a gravel pit to irrigate a sod farm. In consultation with the parties, the Board granted the Appellants' request to extend responses to the Board regarding their Stay requests. On August 30, 2001, the Director notified the Board that the Approval Holder requested the Approval be cancelled. In light of the cancellation, the Board advised the parties on August 31, 2001, that it would be dismissing the appeals. On September 4, 2001, Mr. Mathier advised the Board that he would be withdrawing his appeal. On September 12, 2001, the Board confirmed receipt of Mr. Mathier's letter and advised that it would be proceeding with issuing a Decision dismissing all of the appeal and on September 25, 2001, the Board issued its Decision as the appeals are now moot, not properly before the Board, or without merit.

Cite as: *Matier et al. v. Director, Approvals, Northeast Boreal Region, Regional Services, Alberta Environment*, re: *Meadowview Sod Farms Ltd.*

01-071

Appellant(s) – Mr. Douglas R. Stanger, **Operator** – Renaissance Energy Ltd., **Location** – near Drumheller, **Type of Appeal** – Decision

On August 7, 2001, the Board received a Notice of Appeal from Mr. Douglas R. Stanger with respect to Reclamation Certificate 39458 issued to Renaissance Energy Ltd. for Renaissance Drumheller 16-16-30-19 Well, located at NE 16-30-19 W4M. The Appellant appealed the Certificate stating that the land has not been restored to his satisfaction. On August 27, 28 and September 7, 2001, the Board received a telephone call from the Certificate Holder, a letter from the Director and a telephone call from the Appellant, respectively advising that a settlement had been reached. In his telephone call, the Appellant advised he would forward a letter with respect to withdrawing his appeal. To date, no letter has been received from the Appellant. On September 17, 2001, the Board issued a Decision dismissing the appeal as the Appellant failed to respond to the Board's written request on August 31, 2001, to confirm that a resolution had been reached and that the Appellant would be withdrawing his appeal.

Cite as: *Stanger v. Inspector, Environmental Service, Alberta Environment*, re: *Renaissance Energy Ltd.*

01-072

Appellant(s) – Mr. Tom Weber, Weber Family, Landowners of NE ¼ 32-88-8-W4M, Clearwater River Committee and Majic Country Wilderness Adventures **Operator** – Corridor Pipeline Ltd., **Location** – near Rainbow Creek Alberta, **Type of Appeal** – Decision

The Environmental Appeal Board received a Notice of Appeal on August 8, 2001 from Mr. Tom Weber on behalf of himself, his family, other landowners of the NE ¼ 32-88-8-W4M, members of the Clearwater River Committee, and Majic Country Wilderness Adventures regarding Amending Approval 69136-00-00 issued to Corridor Pipeline Ltd. by Alberta Environment, for the Corridor Pipeline Project Rainbow Creek reroute. The Corridor Pipeline connects the oil sands projects in Fort McMurray, Alberta with oil refineries in Fort Saskatchewan, Alberta. Mr. Weber and the parties he represents had notice of and were given the opportunity to participate in proceedings before the Alberta Energy and Utilities Board (AEUB). In this Board's view, the AEUB adequately dealt with the concerns raised in the Notice of Appeal. As a result, the Environmental Appeal Board is required to dismiss the appeal. The Environmental Appeal Board has also reviewed the Notice of Appeal filed by Mr. Weber and has determined that neither he, nor the parties that he represents, are directly affected by the Corridor Pipeline Project Rainbow Creek reroute. As a result, even if all of the concerns raised in the Notice of Appeal had not been adequately dealt with, the Environmental Appeal Board would still dismiss the appeal because the Appellants have failed to demonstrate that they are directly affected by the project. The Board issued its Decision in this regard on May 10, 2002.

Cite as: *Weber et al. v. Director, Approvals, Bow Region, Regional Services, Alberta Environment, re: Corridor Pipeline Ltd.*

01-073

Appellant(s) – Messrs. John, Steven and Ms. Julie and Leanne Jenkins, **Operator** – AES Calgary, **Location** – west of Chestermere, **Type of Appeal** – Decision

On August 9, 2001, the Board received a letter from Messrs. John and Steven and Ms. Julie and Leanne Jenkins regarding a Gas Fired Power Plant (Application No. 2001113). On August 23, 2001, Board staff received a message from one of the Appellants advising they sent in their appeal prematurely as a final decision regarding the Application has yet to be made by the Department. On August 24, 2001, the Department advised that the Alberta Energy and Utilities Board was currently holding a public hearing to determine if this project is in the public interest and that Alberta Environment has not yet made a decision on the matter. Given the fact that no decision has been made with respect to the Application and that the matter was under review by the Alberta Energy and Utilities Board, the Board on September 17, 2001, dismissed the appeal under section 87(5)(a)(i.2) of the *Environmental Protection and Enhancement Act*.

Cite as: *Jenkins et al. v. Alberta Energy and Utilities Board, re: AES Calgary.*

01-074

Appellant(s) – Elke Blodgett, **Operator** – Genstar Development Company, **Location** – St. Albert, **Type of Appeal** – See below

Overview – Alberta Environment issued Approval No. 00150792-00-00 under the *Water Act* to the Genstar Development Company authorizing the placement of earth fill material on two parcels of land in the flood plains of the Sturgeon River and in the flood plains of Big Lake, in the City of St. Albert. The area where the fill material is being placed is proposed to become part of a new housing development.

Decision - Ms. Elke Blodgett filed a Notice of Appeal objecting to the decision of the Director to reject her Statement of Concern and, in essence, objecting to the issuance of the Approval. The Notice of Appeal argued that Ms. Blodgett was directly affected and that her Statement of Concern should have been taken into account. Ms. Blodgett asked for the Approval to be cancelled and asked for a Stay pending the resolution of the appeal. The Board initially requested and received written submission on the questions of Ms. Blodgett's directly affected status and her request for a Stay. Following a review of these submissions the Board decided to hold a preliminary meeting to hear further submissions from the parties. On December 28, 2001 the Board issued a Decision advising that it is of the view that Ms. Blodgett is not directly affected within the meaning of the *Water Act*. While Ms. Blodgett frequently uses the areas adjacent to the areas to be filled, the Board does not find that this provides a sufficient basis to find that she is directly affected. In the Board's view, the key difference between this case and the *Bildson* case, which Ms. Blodgett relies upon, is that the fill activity that is authorized under this Approval is taking place on private, as opposed to public land.

Cite as: *Blodgett v. Director, Northeast Boreal Region, Regional Services, Alberta Environment re: Genstar Development Company.*

Decision – Ms. Blodgett filed a request on March 13, 2002 for the Board to reconsider her directly affected status as outlined in the Board’s Decision of December 28, 2001. After a careful review of the file and the original decision, the Board did not find any compelling evidence or arguments in favour of a reconsideration, and thus, Ms. Blodgett’s request for reconsideration was denied.

Cite as: *Reconsideration Request: Blodgett v. Director, Northeast Boreal Region, Regional Services, Alberta Environment re: Blodgett.*

01-075

Appellant(s) – Big Lake Environmental Support Society, **Operator** – Genstar Development Company, **Location** – St. Albert, **Type of Appeal** – Decision

On August 3, 2001, Alberta Environment issued Approval 00150792-00-00 under the *Water Act* to the Genstar Development Company authorizing the placement of earth fill material on two parcels of land in the flood plains of the Sturgeon River and in the flood plains of Big Lake, in the City of St. Albert, Alberta. The area where the fill material is being placed is proposed to become part of a new housing development. A Notice of Appeal was received from Ms. Louise Horstman, secretary for the Big Lake Environmental Support Society (BLESS) on August 14, 2001, appealing the Approval. Written submissions were received from the parties on how Ms. Horstman and BLESS are directly affected by the Approval issued to Genstar. Upon review of the submissions, the Board decided to dismiss BLESS’ appeal for not being directly affected. BLESS did not provide a complete membership list nor any indication how the members are directly affected as individuals by the Approval. BLESS did not demonstrate to the Board how it had a unique interest over and above the community that is generally affected by the granting of the Approval.

Cite as: *Big Lake Environmental Support Society v. Director, Northeast Boreal Region, Regional Services, Alberta Environment re: Genstar Development Company.*

01-076

Appellant(s) – Ms. Margaret Ouimet and CASP Hwy 37, **Operator** – Ouellette Packers (2000) Ltd., **Location** – near St. Albert, **Type of Appeal** – See below

Overview – This appeal relates to Preliminary Certificate 00150725-00-00 and proposed Licence issued to Ouellette Packers (2000) Ltd. under the *Water Act*. The Preliminary Certificate provides that if Ouellette Packers meets the conditions of the Preliminary Certificate, it will be granted a Licence to divert 8,292 cubic meters of water annually from a well located in SW 03-055-26-W4M, near St. Albert, Alberta. Ouellette Packers intends to establish a hog processing plant at this location and the water is required to supply the plant. Ms. Margaret Ouimet and a group of local residents calling themselves “CASP Hwy 37” filed an appeal opposing the issuance of the Preliminary Certificate and proposed Licence.

Decision - The Board issued a Decision on January 28, 2002 stating that it has determined that Ms. Ouimet and the members of CASP Hwy 37 have not provided sufficient evidence to demonstrate that they are directly affected. In addition, the Board is also of the view that Ms. Ouimet’s real concern is the potential release of contaminants into the environment from the hog processing plant. In the Board’s view, if Ms. Ouimet is correct, the proper place to address the potential release of contaminants into the environment from the hog processing plant is in the Approval issued for that plant, under the *Environmental Protection and Enhancement Act*. The Board has also determined that it has not been presented with any evidence that would warrant extending the deadline for the other members of CASP Hwy 37 to file their own appeals.

Cite as: *Ouimet et al. v. Director, Regional Support, Northeast Boreal Region, Regional Services, Alberta Environment, re: Ouellette Packers (2000) Ltd.*

01-077

Appellant(s) – APF Energy Corporation, **Operator** – APF Energy Corporation, **Location** – near Drumheller, **Type of Appeal** – Discontinuance of Proceedings

On August 28, 2001, the Board received a Notice of Appeal from APF Energy Corporation for the refusal of the Inspector to issue a reclamation certificate to APF Energy Corporation for the Harbour Wayne 11-10-27-20 well. On July 31, 2001, the Inspector held a site inquiry and indicated the profile of vegetation did not meet criteria. On October 30, 2001, a mediation meeting/settlement conference was held in Drumheller, Alberta. Following the discussions, APF advised they would be withdrawing their appeal and submitted a letter to the Board to this effect on November 9, 2001. As a result, the Board issued a Discontinuance of Proceedings on November 16, 2001, and closed its file.

Cite as: *APF Energy Corporation v. Inspector, Bow Region, Alberta Environment.*

01-078

Appellant(s) – Landemarc Farming Ltd., **Operator** – Grey Wolf Exploration Ltd., **Location** – near Smoky Lake, **Type of Appeal** – Decision

On August 28, 2001, the Board received a Notice of Appeal from Landemarc Farming Ltd. with respect to Reclamation Certificate No. 40475 issued to Grey Wolf Exploration Ltd. for SE Sec. 6, Tp. 60, Rge. 19, W4M, incidental to Pacalta Woodland 2-6-60-19 Well near Smoky Lake, Alberta. In the Notice of Appeal, the Appellant asked the Board to hold the appeal in abeyance for one year in order to review the condition of the land and growth of vegetation. Thus, she did not intend to proceed on the merits of her complaint. The Board advised that the abeyance would be granted pending any objections from the other parties to the appeal. Grey Wolf Explorations Ltd. advised they did not have any objections, however, the Inspector advised that holding the appeal in abeyance would result in “regulatory uncertainty”. The Inspector requested the Appellant withdraw the appeal, on a without prejudice basis, and should the Appellant be dissatisfied with the growth of grass at the site next spring, the right to appeal would remain in tact. On September 28, 2001, upon review of the file, the Board issued a decision dismissing the appeal and determined that the appeal is not properly before the Board in that her intention is to preserve her right to appeal rather than proceed with the appeal. The Appellant has the right to file another appeal in this matter before July 12, 2002.

Cite as: *Landemarc Farming Ltd. v. Inspector, Northeast Boreal Region, Regional Services, Alberta Environment.*

01-079

Appellant(s) – Mr. Eric Nielsen, **Operator** – Anderson Exploration Ltd. (now Devon Canada Corporation), **Location** – near Alix, Alberta, **Type of Appeal** – Discontinuance of Proceedings

On August 30, 2001, the Board received a Notice of Appeal from Mr. Eric Nielsen with respect to the decision of the Director to issue Reclamation Certificate No. 00147144-00-00 to Anderson Exploration Ltd. (now Devon Canada Corporation) for the Ulster Alix 2-19-29-23 W4 Well located at S Sec. 19 Tp. 039 Rge. 23 W4M. According to standard practice, the Board wrote to the Natural Resources Conservation Board (the “NRCB”) and the Energy and Utilities Board (the “EUB”) asking whether this matter had been the subject of a hearing or review under their respective Boards’ legislation. The EUB responded in the negative and the Board did not hear from the NRCB. Requests for an abeyance and extension were received by the Board on September 17, October 3, 2001 from the Department and the Operator, respectively. On October 22, 2001, the Operator advised that a potential solution had been reached with the Appellant and on November 15, 2001, Board staff received a call from the Appellant advising that he was satisfied with the work completed by the operator. On November 20, 2001, the Appellant wrote to the Board withdrawing his appeal on the grounds that “The drainage ditch has been repaired. The sunken areas were filled and levelled.” On November 23, 2001, the Board issued a Discontinuance of Proceeding and closed its file.

Cite as: *Nielsen v. Inspector, Parkland Region, Regional Services, Alberta Environment*
re: *Anderson Exploration Ltd.*

01-080, 081, 082, 084, 085, 134, 02-002, 003

Appellant(s) – Mr. Blair Carmichael, Enron Canada Power Corporation, Mr. David Doull, the Lake Wabamun Enhancement and Protection Association, Mr. Nick Zon, **Operator** – TransAlta Utilities Corporation, **Location** – Wabamun Lake, **Type of Appeal** – See below

Overview – Alberta Environment issued on July 30, 2001 Amending Approval 18528-00-03 and on March 9, 2002 issued *Water Act* Licence Amendment No. 00037698-00-02 to TransAlta Utilities Corporation, for the construction, operation, and reclamation of the Water Treatment Plant to be constructed at the Sundance Power Plant site at Wabamun Lake, County of Parkland, Alberta. The purpose of the plant is to mitigate the effects of the other TransAlta operations on Wabamun Lake. The Board received a five appeals from Mr. Blair Carmichael, Enron Canada Power Corporation, Mr. David Doull, the Lake Wabamun Enhancement and Protection Association and Mr. Nick Zon respecting the Approval for the Wabamun Lake Water Treatment Plant. The Board then received three appeal from Mr. David Doull, the Lake Wabamun Enhancement and Protection Association and Mr. Nick Zon with respect to the *Water Act* Licence.

Decision – Enron Canada Power Corporation filed a Notice of Appeal on August 30, 2001 objecting to the Approval on the basis that it indirectly imposed obligations under the Sundance Power Plant Approval, in which Enron claims an interest. Enron claims that it has the right to appeal the Water Treatment Plant Approval as a result of the Power Purchase Arrangement that it has with TransAlta in relation to the Sundance Power Plant. On June 26, 2002, the Board issued a Decision disagreeing with Enron, and dismissing the appeal because: 1. Enron has sold “all of its interests” in the Power Purchase Arrangement to the ASTC Power Partnership, who has decided *not* to appeal; 2. Enron’s financial and economic interests, which the Board found to be the *major* basis of Enron’s appeal arguments, was not sufficient on the facts of this case to establish that Enron was directly affected; and 3. Enron’s real challenge was not aimed at the decision of Alberta Environment, but at a commercial dispute with TransAlta, and as such, there was nothing claimed against Alberta Environment upon which the Board should decide or Alberta Environment could do.

Cite as: *Enron Canada Power Corporation v. Director, Northern East Slopes Region, Regional Services, Alberta Environment, re: TransAlta Utilities Corporation.*

Decision – After reviewing the submissions and hearing the presentations of Mr. Blair Carmichael, Mr. David Doull, Mr. Nick Zon, the Lake Wabamun Enhancement and Protection Association, TransAlta Utilities and Alberta Environment, at the preliminary meeting on April 17, 2002, the Board issued a Decision on June 25, 2002 stating that it has determined that it will consider the following issues at the hearing of these appeals: Issue 1: the adequacy of the water balance model and the factors (e.g. surface runoff) that it relies upon as a basis for establishing the requirements for the quantity of treated water to be returned to Wabamun Lake by means of the water treatment plant; Issue 2: the ability of the water treatment plant, as approved, to be able to deliver the specified quantities of treated water to Wabamun Lake; Issue 3: the water quality of the Sundance cooling pond as it may be a factor in limiting the ability of the approved water treatment plant to deliver the quantities of water specified in the License to the quality required by the Approval; and Issue 4: the method and timing of providing reports to interested individuals and the actual content of the data reported as effective means to assure the Parties that the proposed mitigation is achieving the expected compensation for the impact of the Approval Holder upon water levels in Wabamun Lake.

Cite as: *Issues Decision: Carmichael et al. v. Directors, Northern East Slopes Region and Central Region, Regional Services, Alberta Environment, re: TransAlta Utilities Corporation.*

01-080, 082, 084, 085, 134, 02-002 and 003-ID – The Board had scheduled a hearing for May 15 and 16, 2002. Shortly before the hearing the Lake Wabamun Environmental Protection Association (“LWEPA”) made a motion to expand the scope of the hearing to more broadly consider water quality issues as a result of recent reports of fish mortality and significant exceedances of heavy metals at Lake Wabamun. The Board asked for written submissions from the parties in response to this request and also heard oral arguments at the beginning of the hearing. The Board also heard oral evidence from two employees of Alberta Environment, one of whom is responsible for the investigation into the reports of fish mortality and exceedances of heavy metals. Considering all of the arguments, including the evidence of the witnesses,

the Board decided to adjourn the hearing for 90 days to permit Alberta Environment to complete its investigation and report back to the Board and the parties (subject to the privileges that may apply to investigations and/or prosecutions). The Board decided that while, at this time, there is no reason to expand the scope of the hearing, the Board's function is to provide the Minister with the most thorough and complete report and recommendations that it can. Given the fact that more information will shortly be available, that according to one of the Alberta Environment witnesses may be relevant to the issues the Board is trying to decide, the Board is required by the principles of natural justice and procedural fairness to adjourn the hearing until this information on fish and heavy metals is available. In making this decision, the Board is mindful that it must balance two competing interests – efficiency and thoroughness. However, in the absence of any prejudice to any of the parties (and all parties noted that their was no prejudice against them save TransAlta's witnesses being present), the Board decided it was appropriate to adjourn the hearing. At the conclusion of the 90 days, and subject to whatever motions are proper at that time, the Board will proceed with the hearing. The Board outlined its reasons in its Decision of May 30, 2002.

Cite as: *Adjournment Motion: Carmichael et al. v. Directors, Northern East Slopes Region and Central Region, Regional Services, Alberta Environment*, re: *TransAlta Utilities Corporation*.

01-085-D - The Board commenced the Hearing on May 15, 2002. Appellant, Mr. Nick Zon, did not attend the hearing, nor did he file any written submissions with the Board as is required by the Environmental Appeal Board Regulation. The Board also wrote to him prior to the hearing to ask if he would be filing a written submission. He did not respond. On May 31, 2002, the Board issued a Decision stating that pursuant to section 95(5) of the *Environmental Protection and Enhancement Act* for failing to comply with a written notice, and pursuant to section 32 of the Board's Rules of Practice for failing to attend a proceeding, the Board dismissed Mr. Zon's appeal.

Cite as: *Zon v. Director, Northern East Slopes Region, Regional Services, Alberta Environment*, re: *TransAlta Utilities Corporation*.

Discontinuance of Proceedings – The Board commenced the hearing of this matter on May 15, 2002, however the Board received an e-mail from Appellant, Mr. Blair Carmichael, on June 10, 2002 advising that he had reached an agreement with TransAlta Utilities Corporation and as a result is withdrawing his appeals. The Board therefore closes its files in the matter of his appeal and issued a Discontinuance of Proceedings on June 13, 2002.

Cite as: *Carmichael v. Directors, Northern East Slopes Region and Central Region, Regional Services, Alberta Environment*, re: *TransAlta Utilities Corporation*.

01-082, 01-084, 02-002, and 02-0030-R – Following several motions with respect to the issues to be considered in the hearing, the Board determined that the following issues would be considered: 1. the adequacy of the water balance model as a basis for establishing the quantity of water to be returned to the Lake; 2. the ability of the water treatment plant to deliver the specified quantities of water; 3. the water quality of the Sundance Cooling Pond as a limiting factor on the ability to deliver the quantities of water required to the quality required; and 4. the method and timing of providing reports. Based on the evidence presented, particularly by Alberta Environment and the independent witness Mr. Gan, the Board is of the view that a 10 percent safety factor should be added to the requirement for returning water to Wabamun Lake. Further, some additional information should be collected to improve the water balance model. The Board does not have concerns with the ability of the water treatment plant to return the qualities of water required. The Board also does not foresee that TransAlta's decision to use the Sundance Cooling Pond as the source of water for the water treatment plant makes it inherently likely that it will fail to satisfy the terms of the Approval and the Licence. Finally, with respect to additional reporting requirements, TransAlta has previously agreed to address stakeholder concerns. The Board is of the view that the additional reporting requirements and the additional commitments are reasonable, and where appropriate, should be incorporated into the Approval or Licence. On November 18, 2002, the Board issued a Report and Recommendations to the Minister of Environment to confirm the Licence and Approval subject to provisions listed. The Minister approved the recommendations by the Board on February 11, 2003.

Cite as: *Doull et al. v. Directors, Northern East Slopes Region and Central Region, Regional Services, Alberta Environment*, re: *TransAlta Utilities Corporation* (18 November 2002), Appeal Nos. 01-082, 01-084, 02-002, and 02-003-R (A.E.A.B.).

01-082, 01-084, 02-002, and 02-003-ID3 – The Board held a Preliminary Meeting and commenced a Hearing (that was adjourned after a preliminary motion and subsequently reconvened), and in doing so, requested the participation of potential intervenors. Mr. C.G.P. Spilsted was recognized as a potential interested person and was granted limited intervenor status with respect to these appeals. However, when the Hearing adjourned, Mr. Spilsted requested that the Board reconsider its intervenor decision and grant him the right to participate more actively at the continuation of the Hearing. After receiving submissions from the parties, the Board issued a Decision on February 13, 2003, granting Mr. Spilsted’s request for a more active role at the continuation at the Hearing.

Cite as: Intervenor Decision: *Spilsted v. Directors, Northern East Slopes Region and Central Region, Regional Services, Alberta Environment*, re: *TransAlta Utilities Corporation* (13 February 2003), Appeal No.s. 01-082, 01-084, 02-002, 02-003-ID3 (A.E.A.B.).

01-082, 01-084, 02-002, and 02-003-CD – The Board had determined four issues to be heard at the hearing. Prior to the hearing date, the Lake Wabamun Protection and Enhancement Association (LWEPA) filed a motion requesting that the issues be expanded. The Board dismissed LWEPA’s motion to expand the scope of the hearing, and granted an adjournment to require Alberta Environment to continue with the studies regarding the fish kills and heavy metals in the lake. The Board asked Alberta Environment to file these reports, and once it had received the reports, the Board would entertain further motions to expand the scope of the hearing, should any of the parties wish to make such motions. Prior to the hearing recommencing, the Board received an application for interim costs from LWEPA requesting funds to engage two experts to review reports provided by Alberta Environment and TransAlta. After reviewing the application and the submission of the parties, the Board determined that the costs requested did not reasonably and directly relate to the issues under appeal. Therefore, the Board issued a Decision on February 13, 2003, to deny the request for interim costs.

Cite as: Costs Decision re: *TransAlta Utilities Corporation* (13 February 2003), Appeal Nos. 01-082, 01-084, 02-002, and 02-003-CD (A.E.A.B.).

01-082, 01-084, 02-002, and 02-003-ID4 – Following the adjournment, the Board permitted the parties to file any further motions regarding issues to be heard at the hearing. Mr. Doull filed a motion to expand the issues to include water quality of the Lake in general and to adjourn the hearing until such time that all relevant information was available. TransAlta filed a motion that three of the four issues initially identified by the Board are now moot. No motion was received by LWEPA. After receiving and reviewing submissions on these motions, the Board determined: (1) that the issues should not be expanded to include water quality generally as no connection was demonstrated between the fish kills and heavy metals and the Water Treatment Plant; and (2) the issues set by the Board are not moot. The Board directed that the hearing proceed and that the original four issues, as determined by the Board, would be the issues that would be heard. The Board has subsequently concluded the Hearing, issued its Report and Recommendations on November 18, 2002, and the Minister accepted the Board’s recommendations. These reasons complete the Board’s file in this matter and the Board issued a Decision on May 15, 2003.

Cite as: Preliminary Motions: *Doull et al. v. Directors, Northern East Slopes Region and Central Region, Regional Services, Alberta Environment*, re: *TransAlta Utilities Corporation* (15 May 2003), Appeal Nos. 01-082, 01-084, 02-002 and 02-003-ID4 (A.E.A.B.).

01-080, 01-082, 01-084, 01-085, 01-134, 02-002 and 02-003-E – The Board issued an Erratum for Issues Decision: *Carmichael et al. v. Directors, Northern East Slopes Region and Central Region, Regional Services, Alberta Environment* re: *TransAlta Utilities Corporation* (25 June 2002), Appeal No. 01-080, 01-082, 01-084, 01-085, 01-134, 02-002, 02-003-ID2 (A.E.A.B.) on May 8, 2003. The Board removed and replaced paragraph 44.

Cite as: *Erratum: Issues Decision: Carmichael et al. v. Directors, Northern East Slopes Region and Central Region, Regional Services, Alberta Environment*, re: *TransAlta Utilities Corporation* (8 May 2003), Appeal Nos. 01-080, 01-082, 01-084, 01-085, 01-134, 02-002 and 02-003 (A.E.A.B.).

Appellant(s) – OMERS Resources Ltd., **Operator** – OMERS Resources Ltd., **Location** – near Hanna, **Type of Appeal** – Report and Recommendations

On August 31, 2001, the Board received a Notice of Appeal dated August 31, 2001, from OMERS Resources Ltd. with respect to the Inspector's refusal to issue a reclamation certificate to OMERS Resources Ltd. for the Poco Watts 14-13-31-17 Well. The Inspector indicated that the reclamation certificate was refused due to profile, poor vegetation, soil quality, and possible contamination. On September 4, 2001, the Board received a letter from Hart Environmental Land Protection Inc., representatives for the Appellant advising that Mr. Donald and Ms. Ruth Gordon would have an interest in the appeal. In consultation with the parties, the Board scheduled a mediation meeting/settlement conference on October 22, 2001 in Hanna, Alberta, with the landowner, Mr. Gordon, also attending the mediation. Following productive and detailed discussions, a resolution evolved and a resolution was signed. As a result, the Board issued a Report and Recommendations on October 23, 2001, recommending to the Minister of Environment that the application for reclamation certificate be reinstated and that a new inquiry be conducted. The Minister approved the recommendations on October 29, 2001.

Cite as: *OMERS Resources Ltd. v. Inspector, Bow Region, Regional Services, Alberta Environment.*

01-086

Appellant(s) – Devlan Exploration Company Ltd., **Operator** – Devlan Exploration Company Ltd., **Location** – Cereal, **Type of Appeal** – Discontinuance of Proceedings

On September 6, 2001, the Board received a Notice of Appeal from Devlan Exploration Company Ltd. The appeal was with respect to the decision of the Inspector to refuse to issue a reclamation certificate to Devlan Exploration Company Ltd. with respect to well Devlan Canor Sedalia 15-32-29-6-W4M. On September 17, 2001, the Inspector wrote to the Board, making a motion to dismiss the Notice of Appeal on the grounds that the appeal is without merit. In response to the Board's letter of September 18, 2001, asking the Appellant to provide comments on the Inspector's letter, the Appellant advised that he would withdraw the appeal, however, requested the file not be cancelled and a field inquiry be scheduled for 2002 and 2003. In response to the Appellant's request, the Inspector agreed to the proposal and will hold the file open until 2003. As a result, the Appellant withdrew the appeal and the Board issued a Discontinuance of Proceedings on October 11, 2001 and closed its file.

Cite as: *Devlan Exploration Company Ltd. v. Inspector, Bow Region, Regional Services, Alberta Environment.*

01-087

Appellant(s) – ConCerv, **Operator** – EPCOR Power Development Corporation and EPCOR Generation Inc., **Location** – Edmonton, **Type of Appeal** – Decision

On December 10, 1996, Approval N. 1395-01-00 was issued to Edmonton Power Inc. (the predecessor to EPCOR) for the operation of the Rosssdale thermal electric generating plant. On August 10, 2001, Amending Approval No. 1395-01-01 was issued to EPCOR Power Development Corporation and EPCOR Generation Inc. (collectively "EPCOR"). The Amending Approval amended specific conditions of the original Approval which authorized the construction of a 170 MW gas turbine generator, designated at Unit 11 at the Rosssdale Power Plant. On August 31, 2001, Mr. John Oxenford, President of the Concerned Citizens for Edmonton's River Valley ("ConCerv") filed a Notice of Appeal with the Board on behalf of the members of ConCerv, objecting to the expansion of the Rosssdale facility. On September 20, 2001, the Director advised that EPCOR's project was the subject of extensive public hearing before the Energy and Utilities Board ("EUB") and therefore, the appeal should be dismissed under s. 87(5)(b)(i) of the *Environmental Protection and Enhancement Act*. On September 6, 2001, the Board received documents from the EUB advising that ConCerv participated in a public hearing before the EUB and provided a copy of Decision 2001-33. On November 1, 2001, a meeting between the Director and EPCOR took place to discuss the Amending Approval. Ms. Elaine Solez, President of the Central Area Council of Community League organization requested to be kept informed about the Board's proceeding with respect to this appeal. Further to the Director's meeting with EPCOR and continued discussions, on November 15, 2001,

Approval 1395-01-01 was cancelled pursuant to section 67(3)(b) of the *Environmental Protection and Enhancement Act* and Approval 1395-01-00, as it existed before Approval 1395-01-01 was issued, remains in full force and effect. On November 22, 2001, the Board issued a Decision to dismiss the appeal as it is either moot, not properly before the Board or without merit.

Cite as: *ConCerv v. Director, Northeast Boreal Region, Regional Services, Alberta Environment re: EPCOR Power Development Corporation an EPCOR Generation Inc.*

01-088

Appellant(s) – Town of St. Paul, **Operator** – Town of St. Paul, **Location** – St. Paul, **Type of Appeal** – Discontinuance of Proceedings

On September 6, 2001, a Notice of Appeal was filed by the Town of St. Paul. The appeal was with respect to Approval 1183-02-00 issued to the Town of St. Paul for the operation and reclamation of a waterworks system for the Town of St. Paul. In response to the Director's concern that the appeal was filed outside the specified timelines, the Appellant responded with reasons on September 17, 2001. On October 9, 2001, the Board received a letter from the Director advising that some discussion could take place outside the appeal process regarding some of the issues raised. On October 11, 2001, the Appellant wrote to the Board advising that they did not wish to pursue the appeal at this time because it was evident that the Director was not prepared to exercise discretion to extend the appeal limit. The Board then advised the parties on October 15, 2001, that the final decision regarding exercising discretion lies with the Board. On October 23, 2001, Board staff received a telephone call from the Appellant advising that they were withdrawing the appeal and would make application to the Director for an amendment of the Approval in question to address their concerns. As a result, on October 26, 2001, the Board issued a Discontinuance of Proceedings and closed its file.

Cite as: *Town of St. Paul v. Director, Approvals, Northeast Boreal Region, Regional Services, Alberta Environment.*

01-089

Appellant(s) – APF Energy Corporation, **Operator** – APF Energy Corporation, **Location** – Drumheller, **Type of Appeal** – Discontinuance of Proceedings

On August 31, 2001, the Board received a Notice of Appeal from APF Energy Corporation with respect to the decision of the Inspector to refuse to issue a reclamation certificate to APF Energy Corporation Inc. for the Cairn et al Wayne 08-16-027-20 W4M Well. On September 17, 2001, the Inspector requested the Appellant clarify whether they had filed the appeal on behalf of APF Energy Corporation as well as identify the grounds for the appeal. On September 24, 2001, the Appellant advised the Board that she wished to withdraw the appeal on the grounds that she believed the lease and all three access roads met criteria, and that she would resubmit an application to the Department. On September 28, 2001, the Board issued a Discontinuance of Proceeding and closed its file.

Cite as: *APF Energy Corporation v. Inspector, Bow Region, Regional Services, Alberta Environment.*

01-090

Appellant(s) – Burnswest Corporation, **Operator** – Burnswest Corporation, **Location** – Cochrane, **Type of Appeal** –

Overview – Alberta Environment issued Administrative Penalty No. 01/10-BOW-AP-01/10 to Burnswest Corporation and Tiamat Environmental Consultants Ltd. in the amount of \$3,500 for the contravention of what was section 59 (now section 61) of the *Environmental Protection and Enhancement Act*. This section prohibits a person from carrying out an activity without an approval. Alberta Environment alleged that Burnswest and Tiamat treated more than 10 tonnes of hazardous waste by land treating soil with concentrations of leachable naphthalene greater than 0.5 mg/L at a construction site in Cochrane, Alberta. The treatment of more than 10 tonnes of hazardous waste per month requires an approval.

Decision - Burnswest, supported by Tiamat, appealed the Administrative Penalty on September 10, 2001, and the Board held a hearing on December 11, 2001. During the hearing, it became apparent that the evidence of an additional employee of Alberta Environment would be necessary to conclude the hearing. As this employee was not available to attend the hearing on December 11, 2001, the Board adjourned the hearing and continued on February 1, 2002, to hear this additional evidence. Upon reviewing all the evidence, the Board issued a Decision on March 1, 2002 stating that it has decided to confirm Alberta Environment's decision to issue an Administrative Penalty to the Burnswest and Tiamat. However, the Board reduced the amount of the Administrative Penalty from \$3,500 to \$1,000. In coming to this decision, the Board assessed a greater portion of the penalty than Alberta Environment suggested for failing to obtain an approval from Alberta Environment prior to starting the treatment of hazardous waste. The Board believes that the requirement to obtain an approval is the cornerstone of the regulatory scheme. However, the Board also reduced a portion of the penalty as there was considerable confusion among Alberta Environment employees as to the type of authorization required, resulting in miscommunication and an unacceptably long delay for Burnswest to be informed of what was needed in the application and in assessing the administrative penalty. The Board also decreased the amount of the penalty to \$1,000 taking into account the level of response and cooperation from Burnswest and Tiamat.

Cite as: *Burnswest v. Director, Enforcement and Monitoring, Bow Region, Regional Services, Alberta Environment.*

Cost Decision - An application for costs was received from Burnswest in the amount of \$1,067.00 and from Tiamat in the amount of \$1,760.00. The Board issued a Costs Decision on June 14, 2002 denying the requests for costs from Burnswest and Tiamat because: 1. the costs were considered part of doing business, 2. the costs were not appropriate to issue against the Director and effectively the taxpayers of Alberta, and 3. the costs fell within the appropriate responsibility of any party to an appeal.

Cite as: *Cost Decision re: Burnswest Corporation.*

01-091

Appellant(s) – Mr. Grant McNabb, **Operator** – Mr. Axel Steinmann, **Location** – near Cochrane, **Type of Appeal** – Decision

Mr. Axel Steinmann was issued *Water Act* Approval 00151445-00-00 by Alberta Environment, for a channel realignment of a portion of Baymar Creek near Cochrane, Alberta. Mr. Grant McNabb filed a Notice of Appeal on September 27, 2001 stating his principal concern was the steep walled trench and the potential for erosion, and the proximity of the trench to his fence. Alberta Environment advised the Board that the project was completed in accordance with the Approval granted to Mr. Steinmann, and a certificate of completion was submitted. It was Alberta Environment's position that there was nothing further to be done in relation to this Approval. The Board requested written submissions in response to Alberta Environment's motion to dismiss the appeal. The Board concluded in its Decision of May 10, 2002 that the appeal is moot, and there is no remedy that could be given to Mr. McNabb. Installing a culvert the length of the diversion or altering the slopes along the trench could create more of a disturbance to the environment. There are no reasonable or logical alternatives available for a remedy.

Cite as: *McNabb v. Director, Bow Region, Natural Resources Service, Alberta Environment*
re: *Axel Steinmann.*

01-092

Appellant(s) – Mr. Stanley Pethybridge, **Operator** – Village of Alix, **Location** – Village of Alix, **Type of Appeal** – Discontinuance of Proceedings

On September 25, 2001, the Environmental Appeal Board received a Notice of Appeal from Mr. Stanley Pethybridge appealing Approval No. 00147207-00-00 issued to the Village of Alix. The appellant advised that he did not authorize any drilling on his land by Westcan Malting Ltd. or the Village of Alix and therefore, did not want the licence to be issued. On October 1, 2001, the Board acknowledged the Appellant's Notice of Appeal, requested additional information and advised that the Notice of Appeal was filed outside the prescribed time limits set out in the Water Act, S.A. 1996, c. W-3.5. Lastly, the Board requested reasons for the extension of time to appeal. On October 10, 2001, the Board acknowledged a

telephone conversation with the Appellant wherein it was determined that the principal issue in the appeal was access to land as it relates to the Village of Alix exercising its rights under the Approval. Through ongoing discussions between the Appellant and Westcan Malting Ltd., and the Appellant granted permission to access the land and on November 13, 2001, advised the Board that he would be withdrawing his appeal. As a result, on November 19, 2001, the Board issued a Discontinuance of Proceedings and closed its file.

Cite as: *Pethybridge v. Director, Parkland Region, Regional Support, Alberta Environment, re: Village of Alix*

01-093

Appellant(s) – Mount Vista Estates Co-operative Ltd., **Operator** – Mount Vista Estates Co-operative Ltd., **Location** – Municipal District of Rocky View No. 44, **Type of Appeal** – Decision

Alberta Environment issued Approval No. 147324-00-00 to Mount Vista Estates Co-operative Ltd. authorizing the construction, operation and reclamation of a waterworks system for the Mount Vista Estates subdivision located in E ½ 26-26-4-W5M in the Municipal District of Rocky View No. 44. Mount Vista Estates Co-operative Ltd. filed an appeal with the Board, appealing the condition under part 4 of the Approval under which a certified operator is required to operate the waterworks system. A mediation meeting was scheduled, however, it was subsequently cancelled in consultation with the parties and a conference call took place between the Board's General Counsel and Settlement Officer, Alberta Environment and Mount Vista Estates Co-operative Ltd. During the conference call Mount Vista Estates Co-operative Ltd. agreed to pursue further avenues for complying with the requirement to have a certified operator. Discussions and the endeavours of Mount Vista Estates Co-operative Ltd. did not result in the resolution of the appeal and a motion was brought forward by Alberta Environment to dismiss the appeal. In order to bring the appeal to a conclusion, the Board scheduled a hearing via written submissions. The Board did not receive the initial written submission from Mount Vista Estates Co-operative Ltd. on the due date. After writing again to Mount Vista Estates Co-operative Ltd., requesting they submit their written submission, and after telephone conversations with them, it became apparent that they were neither going to provide a written submission or a letter of withdrawal to the Board. The Board issued a Decision on February 25, 2002 dismissing the appeal pursuant to section 95(5) of the *Environmental Protection and Enhancement Act* for failing to comply with a written notice.

Cite as: *Mount Vista Estates Co-operative Ltd. v. Director, Bow Region, Regional Services, Alberta Environment.*

01-094 & 01-109

Appellant(s) – Mr. Robert Lederer on behalf of Mrs. Christine Lederer, Mr. Pat and Mrs. Rita Chant, Mr. and Mrs. Rod McBride and Mr. Daryl Seaman and Dr. E.W. Paul Luxford, **Operator** – Spruce Valley Ranch Ltd., **Location** – near Millarview, **Type of Appeal** – Discontinuance of Proceedings

On October 11, 2001, the Board received a Notice of Appeal from Mr. Robert Lederer on behalf of Mrs. Christine Lederer, Mr. Pat and Mrs. Rita Chant, Mr. and Mrs. Rod McBride and Mr. Daryl K. Seaman with respect to Approval No. 00076520-00-00 issued to Spruce Valley Ranch Ltd.. The Approval authorized the construction of works for the realignment of a coulee and construction of a silt pond and raw water storage reservoir on a coulee tributary to Threepoint Creek in NW 02-021-03-W5 and NE 03-021-03-W5. In consultation with the parties, the Board advised a mediation meeting/settlement conference would be held on December 5, 2001, in Calgary. The Board also received correspondence and later a Notice of Appeal from Dr. E.W. Paul Luxford. In consultation with the parties, the Board decided that Mr. Luxford could participate in the mediation meeting/settlement conference, however did not make a determination on the status of his appeal. The Board informed the parties that the Board would determine the status of the appeal in the event that mediation is not successful. On December 5, 2001, the Board held the mediation meeting/settlement conference and following detailed discussions, the Appellants agreed to withdraw their appeals. On December 7 and 12, 2001, the Board received letters from the Appellants confirming that they would withdraw the appeals. As a result, the Board issued a Discontinuance of Proceedings on December 12, 2001, and closed its files.

Cite as: *Lederer et al. v. Director, Bow Region, Regional Services, Alberta Environment*

01-095

Appellant(s) – River Breakup Task Force, **Operator** – TBG Contracting Ltd., **Location** – near Fort McMurray, **Type of Appeal** – Report and Recommendations

On October 17, 2001, the Board received a Notice of Appeal from Ms. Hilda Hanson, Chair of the River Breakup Task Force of the Regional Municipality of Wood Buffalo, with respect to Approval 00154730-00-00 issued to TBG Contracting Ltd.. The Approval authorizes the construction of an ice bridge on the Athabasca River in NW 28 and NE 29-089-09-W4M. In consultation with the parties, a mediation meeting/settlement conference took place on November 20, 2001 in Fort McMurray. Following productive and detailed discussions, a resolution evolved and on November 21, 2001, the Board received a letter from the Appellant confirming ratification of resolution. On the same day, the Board issued a Report and Recommendations to the Minister of Environment and on November 26, 2001, the Minister approved the recommendations.

Cite as: *River Breakup Task Force v. Director, Northeast Boreal Region, Regional Services, Alberta Environment re: TBG Contracting Ltd.*

01-096

Appellant(s) – Ms. Linda Court, **Operator** – Lafarge Canada Inc., **Location** – Municipal District of Rocky View No. 44, **Type of Appeal** – As listed below

Overview: On October 2, 2001, Alberta Environment issued Approval No. 150612-00-00 to Lafarge Canada Inc. for the opening up, operation, and reclamation of a pit on N 7-22-28-W4M and NE 12-22-29-W4M in the Municipal District of Rocky View, Alberta.

(01-096-ID) Decision: On November 21, 2001, the Board received a Notice of Appeal from Ms. Linda J. Court appealing the Approval. A mediation meeting was held on January 23, 2002, in Calgary, Alberta. However, the parties did not reach a resolution. Although the Notice of Appeal stated the grounds of the appeal, the Board decided that it was necessary to more precisely indicate what issues were properly before the Board. After reviewing the submissions, the Board issued a Decision on April 22, 2002, stating that the only issues properly before it were: 1. The effect that dust and other air pollutants from the Lafarge Operation may have directly on the Appellant; 2. The effect that noise from the Lafarge Operation may have directly on the Appellant; and 3. The cumulative effects that dust and other air pollutants and noise from the Lafarge Operation, and as specifically regulated by the Approval, may have directly on the Appellant. The operation of the other facilities in the area is *not* before the Board. The other facilities are only relevant to the extent that they form part of the circumstances in which the Lafarge Operation is proposed to be constructed, and to the extent that they contribute to the determination of the cumulative effects as they directly affect the Appellant. The threshold issue of the directly affected status of the Appellant remains outstanding, and this is an issue that must be addressed as a preliminary matter of jurisdiction at the hearing. No representations may be made on any other matters at the hearing of this appeal.

Cite as: *Court v. Director, Bow Region, Regional Services, Alberta Environment, re: Lafarge Canada Inc.*

(01-096-ID) Intervenor Decision: After the issues with respect to this appeal were determined, hearing dates of July 24 and 25, 2002 were decided. As a result of posting the Notice of Hearing in local newspapers, the Board received 19 requests for intervenor status from the residents, the Calgary Health Region, the Alberta Roadbuilders and Heavy Construction Association, the Alberta Sand and Gravel Association, Ms. Shirley and Mr. Rick Schmol, Ms. Joan and Mr. Gerald Marshall, Mr. Brian Evans, Mr. A.G. Soutzo and Burnco Rock Products Ltd. The Board reviewed the requests and the submissions from the parties and on July 12, 2002, issued a Decision advising that the Calgary Health Region would have full party status at the hearing. The remaining individuals, companies, and organizations were permitted to file written submissions only.

Cite as: Intervenor Decision: *Court v. Director, Bow Region, Regional Services, Alberta*

Environment, re: Lafarge Canada Inc.

(01-096-D) Decision – The Board held a hearing on July 24 and 25, 2002 and received evidence on issues concerning: 1. Ms. Court’s directly affected status, 2. The effect that dust and other air pollutants from the Lafarge Operation may have directly on Ms. Court, 3. The effect that noise from the Lafarge Operation may have directly on Ms. Court, and 4. The cumulative effects that dust, other air pollutants, and noise from the Lafarge Operation, as specifically regulated by the Approval, may have directly on Ms. Court. Prior to considering the substantive issues in this appeal, the Board had to determine if Ms. Court was directly affected by the Approval issued to Lafarge. Based on the evidence received and the arguments of the parties, the Board issued a Decision on August 31, 2002, advising that Ms. Court was not directly affected by the Lafarge Operation. As a result, the Board does not have the jurisdiction to consider the other issues raised in this appeal. The Board was of the opinion that Ms. Court’s real concern is the impact of the other existing sand and gravel operations in the area.

Cite as: *Court v. Director, Bow Region, Regional Services, Alberta Environment re: Lafarge Canada Inc.* (31 August 2002), Appeal No. 01-096-D (A.E.A.B.).

(01-096-DOP) Discontinuance of Proceedings: Ms. Court subsequently filed a Judicial Review against the Board’s Decision of August 31, 2002 with the Court of Queen’s Bench of Alberta. The Court issued its decision on May 26, 2003, sending the matter back to the Environmental Appeals Board to be dealt with on the basis that the Appellant was directly affected. The Board began the process of scheduling a hearing of the appeal, however the Appellant withdrew her appeal. As a result, on September 17, 2004, the Board issued a Discontinuance of Proceedings and closed its file.

Cite as: *Court v. Director, Bow Region, Regional Services, Alberta Environment re: Lafarge Canada Inc.* (17 September 2004), Appeal No. 01-096-DOP (A.E.A.B.).

01-097-105 and 107

Appellant(s) – Mr. James Kievit, Mr. Paul Adams, Mr. Marlo Reynolds, Ms. Nadine Reynolds, Mr. Jeff Eamon and Ms. Anne Wilson, Mr. Hal Retzer, the Bow Valley Citizens Clean Air Coalition, Ms. Tracey Henderson, Ms. Amy Taylor and Mr. Gary Parkstrom, **Operator** – Lafarge Canada Inc., **Location** – Exshaw, **Type of Appeal** – See below

Overview – Alberta Environment issued on October 22, 2001 Amending Approval 1702-01-02 to Lafarge Canada Inc. for its cement manufacturing plant near Exshaw, Alberta. The Amending Approval permits Lafarge to change the fuel supply for part of the plant from natural gas to coal. The Environmental Appeal Board received nine individual appeals and one by a Coalition in November 2001. The Coalition was formed by members of the Bow Valley Citizens for Clean Air and members of the Pembina Institute for Appropriate Development for the purpose of these appeals.

Decision – The parties came to an agreement as to who would have standing to have their appeals proceed before the Board. It was agreed that three of the individuals and the Bow Valley Citizens for Clean Air should be granted standing. The Board reviewed the joint submission of the parties respecting this agreement and the Notices of Appeal and decided it would accept the Notices of Appeal filed by the three individuals, but that it would not accept the Notice of Appeal filed in part by the Bow Valley Citizens for Clean Air. However, the Board issued a decision on June 24, 2002, advising that the Bow Valley Citizens for Clean Air would be granted party status. As a result, the Board dismissed the Notices of Appeal of the Coalition and the six remaining individuals. As part of its standard practice, the Board also considered whether the issues in the Notices of Appeal had been considered by the Natural Resources Conservation Board or the Alberta Energy and Utilities Board, and whether the persons filing the Notices of Appeal had an opportunity to participate in any of these decision making processes. On the basis of the evidence provided by these boards and the parties to this appeal, the Board finds the provisions of the *Environmental Protection and Enhancement Act* regarding the Natural Resources Conservation Board and the Alberta Energy and Utilities Board are not applicable with respect to these appeals.

Cite as: *Standing Decision: Kievit et al. v. Director, Approvals, Southern Region, Regional Services, Alberta Environment re: Lafarge Canada Inc.*

Decision - During the course of processing the remaining three appeals of Mr. James Kievit, Dr. Paul Adams and Mr. Jeff Eamon, the Board asked for submissions on what issues identified in the Notices of Appeal should be included in the hearing of the appeals. After reviewing the submissions, the Board decided to hold a preliminary meeting on March 25, 2002, to decide what issues would be addressed at the hearing. The Board issued a Decision on April 16, 2002, stating that the following issues would be included in the hearing of these appeals: 1. SO₂ emissions–Approval Clauses 4.1.13 and 4.1.35; 2. mercury and heavy metals; 3. particulates; 4. monitoring and reporting–Approval Clauses 4.1.24 and 4.1.28; 5. human health impact assessment/vegetation assessment study–Approval Clauses 4.1.30 and 4.1.37; 6. any potential antagonistic environmental effects of burning tires and coal; 7. the environmental effects of burning coal on the viewscape (limited to noise, visible pollutants, blue haze, and odour); and 8. the environmental effects of burning coal on the natural surroundings. The Board notes that greenhouse gases are not an appropriate issue for the hearing of these appeals.

Cite as: *Preliminary Motions: Kievit et al. v. Director, Approvals, Southern Region, Regional Services, Alberta Environment re: Lafarge Canada Inc.*

(01-97, 098 and 101) Report and Recommendations – On April 24 and 25, 2002, the Board held an extensive hearing and received volumes of legal, technical and scientific information regarding the appeal from the parties. Taking all information into consideration, including some of the recommendations Lafarge submitted at the close of the hearing, on May 27, 2002, the Board recommended that the Minister uphold the Amending Approval subject to the following changes: 1. the SO₂ emission reduction plan should be submitted by August 1, 2003, (instead of by June 1, 2005, as originally planned) and a 25% reduction in SO₂ should be implemented by June 1, 2005, (no date originally specified); 2. prior to the application for the renewal of the approval, Lafarge should provide Alberta Environment with information regarding the Best Available Demonstrated Technology for the control of emissions of SO₂, fine particulate, mercury, and heavy metals; 3. a continuous SO₂ monitor should be placed at the Barrier Lookout for one complete operational season (as suggested by Lafarge), the results of this monitoring program should analyze the validity of the ambient air quality modelling, this analysis should be provided to Alberta Environment to allow an independent review of the modelling, and all the parties to these Appeals should be encouraged to form and participate in an Air Quality Management Zone; 4. Lafarge should submit the terms of reference for the proposed bioaccumulation study to Alberta Environment for approval and Lafarge should be encouraged to involve the local government and the other parties to these appeals in the review of the terms of reference and, if possible, in the study itself; 5. if the monitoring program reveals that emission levels of mercury and heavy metals are higher than predicted, then Lafarge should develop a program to reduce these emissions; 6. the vegetation study should include an additional vegetation sampling site to the west of Exshaw (agreed to by Lafarge); 7. if blue haze remains an issue, Lafarge should undertake studies on the causes of any portion of the blue haze that they might be responsible for and develop a plan to reduce this problem, and this plan should be provided to Alberta Environment before the application for renewal of this approval is submitted; 8. Lafarge (as they suggested) should have a complaint line for addressing noise complaints from affected neighbours; 9. the Human Health Impact Assessment that Lafarge is required to undertake should involve consultation with all of the parties to these appeals and evaluate the impact of air emissions from the plant using the emerging source, ambient and other available monitoring results; and 10. the proposal for the Human Health Impact Assessment should be provided for approval to Alberta Environment by December 31, 2002, (instead of by June 1, 2003, as originally planned) and it should be completed by December 31, 2003, (instead of by March 1, 2004 as originally planned). The Minister agreed with the recommendations on July 8, 2002.

Cite as: *Kievit et al. v. Director, Approvals, Southern Region, Regional Services, Alberta Environment re: Lafarge Canada Inc.*

(01-97, 098 and 101) Costs Decision – After the Report and Recommendations was issued, the Board received an application for costs from Dr. Adams, Mr. Kievit, Mr. Eamon and the Bow Valley Citizens for Clean Air, for a total amount of \$49,510.40. The costs requested were for legal counsel (\$22,682.18) and for two witnesses (\$9,471.68 and \$17,356.54). In the Board’s Cost Decision of November 12, 2002, the Board denied the request for costs with respect to the two witnesses because: (1) the submissions made by these witnesses did not assist the Board to the degree necessary to support an award for costs; (2) the bills submitted by these witnesses were presented as though they were accepted as expert witnesses by the Board, which they were not; and (3) these witnesses had, in any event, stated that they were “volunteering

their time” as part of the group who originally filed appeals. The Board allowed, in part, the request for costs for legal counsel because the quantum and nature of these costs were reasonable, the legal counsel did an exemplary job in streamlining the appeal process, and the legal counsel was extremely helpful to the Board. Second, the Board awarded these costs as it found the appeals furthered the public interest and goals of the *Environmental Protection and Enhancement Act*. The Board therefore awards costs in the total amount of \$10,559.08 payable by Lafarge Canada Inc. to Dr. Paul Adams, Mr. Jim Kievit, Mr. Jeff Eamon and the Bow Valley Citizens for Clean Air.

Cite as: Costs Decision re: *Kievit et al.* (12 November 2002), Appeal Nos. 01-097, 098 and 101-CD (A.E.A.B.).

01-106 and 108

Appellant(s) – Mr. Andy Dzurny and Mr. William Procyk, **Operator** – Shell Chemicals Canada Ltd., **Location** – near Fort Saskatchewan, **Type of Appeal** – Decision

The Board received Notices of Appeal from Mr. Andy Dzurny on November 26, 2001 and from Mr. William Procyk on November 22, 2001 with respect to Amending Approval 9767-01-09 issued by Alberta Environment to Shell Chemicals Canada Ltd. with respect to the operation of the Scotford Chemical Plant in Fort Saskatchewan, Alberta. The amendment added a number of definitions and amended Table 4.2-1 to allow increased emissions of ethylene during startup of the ethylene glycol plant. The total daily emissions were to remain the same. According to standard practice, the Board wrote to the Alberta Energy and Utilities Board (AEUB) asking whether the matters included in these Notices of Appeal had been the subject of a review or hearing under the AEUB’s legislation. The AEUB advised the Board that it had held a hearing in relation to the Shell Scotford Chemical Plant. In response to this, the Board asked for submissions from Mr. Dzurny, Mr. Procyk, Shell Canada, and Alberta Environment as to whether the matters included in the Notices of Appeal had been the subject of a review or hearing under the AEUB’s legislation. Upon reviewing the documents provided by the AEUB and the submissions the Board concluded in its Decision of June 15, 2002, that the matters included in the Notices of Appeal were previously dealt with by the AEUB. The Board also notes that the real concern of Mr. Dzurny and Mr. Procyk is one of land use, which is not within the Board’s jurisdiction. Therefore, the Board is dismissed the appeals.

Cite as: *Dzurny et al. v. Director, Northeast Boreal Region, Regional Services, Alberta Environment* re: *Shell Chemicals Canada Ltd.*

01-110

Appellant(s) – Chipewyan Prairie First Nation, **Operator** – Enbridge Pipelines (Athabasca) Inc., **Location** – near Christina Lake, **Type of Appeal** – See below

Overview - The Board received a Notice of Appeal on December 21, 2001 from the Chipewyan Prairie First Nation (CPFN) with respect to Approval No. 153497-00-00 issued by Alberta Environment under the *Environmental Protection and Enhancement Act* to Enbridge Pipelines (Athabasca) Inc. for the construction and reclamation of a pipeline near Christina Lake, Alberta. CPFN asked for a Stay of the Approval pending the resolution of their appeal.

Procedural Decision - Alberta Environment argued that the Board does not have the jurisdiction or expertise to decide constitutional issues relating to: the validity of the alleged aboriginal and treaty rights of CPFN; the alleged infringement of those rights; and the alleged duty of Alberta Environment to consult with CPFN. On this basis, Alberta Environment argues that the appeal should be dismissed. The Board asked for submissions from the Parties on the questions: What steps, if any, have the CPFN taken, since it first knew of the request for the Approval that is the subject of this appeal, to enforce the rights to which it now asks the Board to give effect? 2. Given the nature of the rights the CPFN seeks to enforce, and the likelihood of controversy between the parties over the existence, extent and consequences of those rights, why is the Board the appropriate forum to deal with these issues as opposed to the ordinary courts, which possesses among other powers, the power to grant appropriate interim relief? Following its review of these submissions, the Board issued a Procedural Decision on March 22, 2002 stating that it has decided to adjourn the request for a Stay for 30 days to allow CPFN to commence an action in Court to enforce the

rights that they are claiming, should they wish to do so. As part of such an action, CPFN can seek an order against Alberta Environment to restrain the granting of permission to proceed with the pipeline project. If such an injunction is granted, the Board will immediately review it and consider the request for a Stay in light of the terms of such an injunction. CPFN may instead seek a mandatory injunction requiring that the consultation measures they are requesting be carried out. Again, the Board will be guided by the decision of the Court, whatever it may be.

Cite as: Preliminary Motions re: *Chipewyan Prairie First Nation v. Director, Bow Region, Regional Services, Alberta Environment re: Enbridge Pipelines (Athabasca) Inc.*

Discontinuance of Proceedings - The Board issued a Decision on March 22, 2002 advising of its decision to adjourn the request for a Stay for 30 days to allow CPFN to commence an action in Court to enforce the rights that they were claiming, should they wish to do so. CPFN was requested to provide a status report to the Board within 30 days of the Decision being issued. CPFN subsequently withdrew the appeal. The Board therefore closes its file in this matter.

Cite as: *Chipewyan Prairie First Nation v. Director, Bow Region, Regional Services, Alberta Environment re: Enbridge Pipelines (Athabasca) Inc.*

01-111

Appellant(s) – Mr. Ken Hildebrandt, **Operator** – Wascana Energy Inc. (Nexen Canada Ltd.) and Patterson Brothers Consulting Inc., **Location** – near St. Lina, **Type of Appeal** – Discontinuance of Proceedings

On August 21, 2001 Alberta Environment issued Reclamation Certificate 00140250-00-00 to Wascana Energy Inc. (now Nexen Canada Ltd.) and Patterson Brothers Consulting Inc. for the Wascana Sugden 15-21-62-10 well near St. Lina, Alberta. The Board received a Notice of Appeal from Mr. Ken Hildebrandt on December 31, 2001 with respect to a Reclamation Certificate. A mediation meeting and settlement conference, which included a site visit, was held on May 2, 2002. The mediation resulted in a resolution of the appeal and Mr. Hildebrandt withdrew his appeal. As a result of the withdrawal, the Board is closing its file.

Cite as: *Hildebrandt v. Inspector, Northeast Boreal Region, Regional Services, Alberta Environment re: Wascana Energy Inc. (Nexen Canada Ltd.) and Patterson Brothers Consulting Inc.*

01-112

Appellant(s) – Mr. Steve Seniuk, **Operator** – Mr. Steve Seniuk., **Location** – in Lamont County, **Type of Appeal** – Decision

Alberta Environment issued *Water Act* Enforcement Order No. 2001-WA-08 on September 6, 2001 to Mr. Steve Seniuk requiring the removal of an earthen berm located at SE 7-54-17-W4M, near the Hamlet of Hilliard, in Lamont County, Alberta. An amendment to the order was issued on December 5, 2001 allowing more time to comply with the Order to December 21, 2001. Mr. Seniuk filed a Notice of Appeal with the Environmental Appeal Board on December 31, 2001. As the appeal was filed past the seven-day time limit under the *Water Act*, the Board requested information from Mr. Seniuk. Mr. Seniuk admitted in his submissions that he had constructed the berm and that it was built to prevent flooding onto his land. However, the berm affected the natural flow of the water. This caused the water to backup, flooding adjacent properties and creating the potential of damaging the adjacent county roadway. After repeated attempts to get Mr. Seniuk to remove the berm, the Director issued an Enforcement Order. After review of the submissions, the Board issued a Decision on June 4, 2002 dismissing the appeal stating that it is not satisfied that special circumstances existed to extend the prescribed time limit under the *Water Act* for submitting a Notice of Appeal and as a result dismissed the appeal.

Cite as: *Seniuk v. Director, Enforcement and Monitoring, Parkland Region, Regional Services, Alberta Environment.*

01-113 & 115

Appellant(s) – Mr. Ross and Ms. Judy Warner, Mr. Richard Kelk and Ms. Katherine McCulloch, **Operator** – AAA Cattle Company Ltd., **Location** – near Didsbury, **Type of Appeal** – Decision

On January 14, 2002 Alberta Environment issued Approval 00160167-00-00 under the *Water Act* to the AAA Cattle Company Ltd., authorizing the exploration for groundwater near Didsbury, Alberta. The Environmental Appeal Board (the Board) received Notices of Appeal on January 21, 2002 from Mr. Ross Warner and Ms. Judy Warner and on January 24, 2002 from Mr. Richard Kelk and Ms. Katherine McCulloch opposing the Approval. The Board found the Appellants had not filed a Statements of Concern with Alberta Environment within the time frames as required by the *Water Act*. Therefore, the Board issued a decision on June 15, 2002 dismissing the Notices of Appeal for being moot, without merit, or not properly before the Board. The Board also found the issues raised in the Notices of Appeal dealt mainly with the Licence to divert rather than with the Approval to explore. The Board notes that Mr. Warner, Ms. Warner, Mr. Kelk, and Ms McCulloch are free to file Notices of Appeal in relation to the Licence to divert, should it be issued in the future.

Cite as: *Warner et al. v. Director, Central Region, Regional Services, Alberta Environment re: AAA Cattle Company Ltd.*

01-114

Appellant(s) – Bullshead Water Co-op Ltd., **Operator** – Bullshead Water Co-op Ltd., **Location** – near Medicine Hat, **Type of Appeal** – Discontinuance of Proceedings

The Board received a letter from the Bullshead Water Co-op Ltd. with respect to Preliminary Certificate No. 00158361-00-00 issued by Alberta Environment to the Bullshead Water Co-op Ltd. for the diversion of water and operating a waterworks. The Water Co-op filed an appeal as they did not fully understand the implications of the Preliminary Certificate, the associated conditions and the appendix attached to the Preliminary Certificate. The Board requested the Water Co-op provide further information to the Board including their grounds for appeal and the relief sought. On February 21, 2002, the Board received a letter from the Water Co-op withdrawing their appeal. The Board issued a Discontinuance of Proceedings on February 22, 2002.

Cite as: *Bullshead Water Co-op Ltd. v. Director, Southern Region, Regional Services, Alberta Environment.*

01-116

Appellant(s) – Resorts of the Canadian Rockies Inc., **Operator** – Resorts of the Canadian Rockies Inc., **Location** – Bragg Creek, **Type of Appeal** – Decision

Alberta Environment issued Administrative Penalty No. 01/29-BOW-AP-02/03 to Wintergreen Family Resorts Ltd. and Resorts of the Canadian Rockies Inc. for a contravention of section 213(e) (now section 227 (e)) of the *Environmental Protection and Enhancement Act* for failing to ensure that the day-to-day operations of the plant and collection system were supervised by an operator holding a Level II Wastewater Treatment Plant Operator Certificate, late submission of the Wastewater Irrigation Report and failing to immediately report a contravention of the Approval. The Approval in question was issued to Wintergreen Family Resorts Ltd. for the operation of the waste water treatment plant. This section of the *Environmental Protection and Enhancement Act* makes it an offence to violate a term or condition of an Approval. The parties agreed to an amendment of the Administrative Penalty by deleting Resorts of the Canadian Rockies Inc. The Board issued a Decision on March 4, 2002 ordering that the Administrative Penalty be amended by deleting Resorts of the Canadian Rockies Inc.

Cite as: *Resorts of the Canadian Rockies Inc. v. Director, Southern Region, Regional Services, Alberta Environment.*

01-117

Appellant(s) – Mr. Glenn Good, **Operator** – Mr. Glenn Good, **Location** – Town of Oyen, **Type of Appeal** – Discontinuance of Proceedings

On January 15, 2002, Alberta Environment issued Administrative Penalty No. 01/18-BOW-AP-02/04 in the amount of \$2,000 to Mr. Glenn Good for applying the herbicide “Prestige” (an agricultural herbicide only) to a residential lawn, which allegedly caused damage to trees and bushes on neighbouring property from

the treated area. The Environmental Appeal Board received a Notice of Appeal on February 25, 2002 from Mr. Good appealing the Administrative Penalty. After the Board began processing the appeal, it received a request from Alberta Environment to put the appeal in abeyance so that the parties could attempt to resolve the appeal amongst themselves. The Board granted the abeyance, an agreement was reached between Alberta Environment and Mr. Good, and Mr. Good withdrew his appeal. The Board therefore issued a Discontinuance of Proceedings on June 11, 2002.

Cite as: *Good v. Director, Enforcement and Monitoring, Southern Region, Regional Services, Alberta Environment.*

01-118

Appellant(s) – County of Newell No. 4, **Operator** – County of Newell No. 4, **Location** – County of Newell, **Type of Appeal** – Discontinuance of Proceedings

On January 22, 2002, Alberta Environment issued Administrative Penalty No. 01/27-BOW-AP-02/06 in the amount of \$10,500.00 to the County of Newell No. 4. The Administrative Penalty was issued for the alleged contravention, by the County of Newell No. 4, of clause 4.1.1 of the Scandia Water Works Approval by failing to have a certified operator supervising the Scandia Water Treatment Facility; failing to comply with clause 4.2.1 of the Scandia Waterworks Approval, by adding chemicals not approved by the Director into the waterworks system; failing to comply with clause 6.1.1 of the Rainier Waterworks Facility by failing to sample for bacteria in treated water; and failing to immediately report a contravention, as per clause 9.2.1, of the Patricia Wastewater Approval to the Director, Alberta Environment. The Board received a Notice of Appeal from the County of Newell No. 4. on March 1, 2002 appealing the Administrative Penalty. In consultation with the parties, the Board scheduled a hearing for June 7, 2002, in Brooks, Alberta. However, on June 6, 2002, the County of Newell withdrew their appeal. As a result, the Board issued a Discontinuance of Proceedings on June 11, 2002.

Cite as: *County of Newell No. 4 v. Director, Enforcement and Monitoring, Southern Region, Regional Services, Alberta Environment.*

01-119 & 120

Appellant(s) – Ms. Tanni Parker and Mr. Darcy Doblanko, **Operator** – Mr. Petrus Peeters and Ms. Elizabeth Peeters-Matijssen, **Location** – near Calmar, **Type of Appeal** – Report and Recommendations

On February 11, 2002, Alberta Environment issued Licence 00176369-00-00 under the *Water Act* to Mr. Petrus Peeters and Ms. Elizabeth Peeters-Matijssen authorizing the diversion of 10,220 cubic metres of water annually from the well in NE 01-049-27-W4 for the purpose of agriculture (stock water) near Calmar. The Board received Notices of Appeal on March 11, 2002 from Ms. Tanni Parker and Mr. Darcy Doblanko appealing the Licence. The Board held a mediation meeting and settlement conference in Edmonton on May 17, 2002 following which a resolution was reached by the parties. The Board issued a Report and Recommendations to the Minister of Environment which he agreed to on June 4, 2002. The Board also encouraged Alberta Environment to adopt a policy of sending a copy of any licence that has been issued to any valid Statement of Concern filers.

Cite as: *Parker et al. v. Director, Central Region, Regional Services, Alberta Environment re: Peeters and Peeters-Matijssen.*

01-121

Appellant(s) – Ducks Unlimited Canada, **Operator** – City of Edmonton, Transportation and Streets, **Location** – Edmonton, **Type of Appeal** – Discontinuance of Proceedings

On March 13, 2002, Alberta Environment issued *Water Act* Approval 00157215-00-00 to the City of Edmonton, Transportation and Streets, which authorized them to remove or fill an unnamed water body located west of 184 Street and south of Yellowhead Trail in Edmonton, Alberta. The Board received a Notice of Appeal from Ducks Unlimited Canada on March 20, 2002 appealing the Approval. The Board began processing the appeal, however, on April 8, 2002, the Board received a letter from Ducks Unlimited Canada withdrawing their appeal and the Board issued a Discontinuance of Proceedings on April 12, 2002.

Cite as: *Ducks Unlimited Canada v. Director, Northern Region, Regional Services, Alberta Environment*, re: *City of Edmonton, Transportation and Streets*.

01-122

Appellant(s) – Mr. Lionel Miller, **Operator** – Mama Santos Holdings Ltd., **Location** – Calmar, **Type of Appeal** – Discontinuance of Proceedings

On September 28, 2001 Alberta Environment issued Reclamation Certificate No. 00139560-0-00 to Mama Santos Holdings Ltd. for the Mama Santos #5 Well located at SE Sec. 24, Tp. 049, Rge. 27 W4M, near Calmar, Alberta. The Environmental Appeal Board received a Notice of Appeal on March 21, 2002 from the landowner, Mr. Lionel Miller, appealing the Reclamation Certificate. The Board held a mediation meeting and settlement conference in Leduc, Alberta, following which a resolution was reached by the parties and as a result Mr. Miller withdrew his appeal and the Board issued a Discontinuance of Proceedings on June 17, 2002.

Cite as: *Miller v. Inspector, Central Region, Regional Services, Alberta Environment* re: *Mama Santos Holdings Ltd.*

01-123-131, 02-001, 02-001, 02-050-058

Appellant(s) – Messrs. Ronald Hanson, Frank Jensen, Mark Davy, Daniel Davy, Soren Davy, Ken Reid, Robert Copley, Ms. Irene Hanson, Mr. Wayne Hanson, and the City of Airdrie, **Operator** – Apple Creek Golf and Country Club, **Location** – Municipal District of Rocky View, **Type of Appeal** – see below

Overview - On March 18, 2002, Alberta Environment issued a Preliminary Certificate No. 00137211-00-00 and Approval No. 00137206-00-00 under the *Water Act* to Apple Creek Golf and Country Club with respect to their operations at SE 35-27-01-W5M in the Municipal District of Rocky View, Alberta. The Preliminary Certificate, subject to meeting certain conditions, grants a licence authorizing the diversion of 119,929 cubic metres of water annually from McPherson Coulee. The Approval authorizes the construction of a channel improvement, control gates, dykes, and a diversion pipe on McPherson Coulee and an unnamed water body. McPherson Coulee is a tributary of Nose Creek. Ten appeals were filed regarding the Preliminary Certificate and eleven appeals were filed regarding the Approval. (One person who filed an appeal with respect to the Approval did not file an appeal with respect to the Preliminary Certificate. One of the appeals filed regarding the Preliminary Certificate and one of the appeals filed with respect to the Approval were dismissed in two separate decisions.) The Board decided to conduct an information session with the Appellants, Apple Creek Golf and Country Club, and Alberta Environment to provide the Appellants with an overview of the Approval, the Preliminary Certificate, Alberta Environment's approval process, Apple Creek's project, and the Board's appeal process.

01-123-131, 02-001, 02-001, 02-050-058-D1 - After the information session, Alberta Environment requested the Board dismiss all of the appeals, except those filed by Mr. Ronald Hanson. Alberta Environment argued that because Mr. Frank Jensen, Mr. Mark Davy, Mr. Daniel Davy, Mr. Soren Davy, Mr. Robert Copley and the City of Airdrie did not file Statements of Concern, they are not eligible to file appeals. Alberta Environment also argued that the appeals of Mr. Ken Reid, Ms. Irene Hanson, Mr. Wayne Hanson, and the City of Airdrie should be dismissed because they are not directly affected by either the Approval or the Preliminary Certificate. After reviewing the submissions and the evidence before the Board, the Board issued a Decision on November 29, 2002, advising that it would hear the appeals filed by Mr. Ronald Hanson, Ms. Irene Hanson, and Mr. Wayne Hanson. The Board also decided to make the City of Airdrie a party to these appeals. Lastly, the Board decided to dismiss the appeals of Mr. Frank Jensen, Mr. Mark Davy, Mr. Daniel Davy, Mr. Soren Davy, Mr. Ken Reid, and Mr. Robert Copley and the City of Airdrie. The individuals whose appeals have been dismissed can apply for intervenor status at the Hearing.

Cite as: Preliminary Motions: *Hanson et al. v. Director, Southern Region, Regional Services, Alberta Environment* re: *Apple Creek Golf and Country Club* (29 November 2002), Appeal Nos. 01-123-131, 02-001, 02-050-058-D (A.E.A.B.).

01-123, 01-130, 01-131, 02-050, 02-056 and 02-057-R – The Board held a mediation meeting in Airdrie, Alberta on January 28, 2003. The mediation was held to deal with the appeals of Mr. Ronald Hanson, Ms.

Irene Hanson and Mr. Wayne Hanson, following which a resolution was reached by the Hansons, Apple Creek Golf and Country Club and Alberta Environment. As a result, the Board issued a Report and Recommendations on February 3, 2003, recommending the Minister of Environment accept the resolution. The Minister provided approval on February 4, 2003.

Cite as: *Hanson et al. v. Director, Southern Region, Regional Services, Alberta Environment re: Apple Creek Golf and Country Club* (3 February 2003), Appeal Nos. 01-123, 01-130, 01-131, 02-050, 02-056 and 02-057-R (A.E.A.B.).

01-132

Appellant(s) – Bouvry Exports Calgary Ltd., **Operator** – Bouvry Exports Calgary Ltd., **Location** – near Fort Macleod, **Type of Appeal** – Report and Recommendations

On February 28, 2002, Alberta Environment issued Approval 11200-02-00 to Bouvry Exports Calgary Ltd. authorizing the construction, operation and reclamation of a red meat processing plant near the town of Fort Macleod, Alberta. The Board received a Notice of Appeal from Bouvry Exports on March 28, 2002 appealing certain conditions within the Approval. In consultation with Alberta Environment and Bouvry Exports, the Board scheduled a mediation meeting for June 5, 2002. Bouvry Exports requested that the mediation meeting be postponed as they were in discussions with Alberta Environment and were optimistic that a resolution could be reached. The mediation meeting and settlement conference was twice rescheduled. On June 18, 2002, Alberta Environment and Bouvry Exports provided their Resolution to the Board for consideration by the Minister of Environment and as a result, the Board cancelled the mediation meeting and settlement conference scheduled for June 20, 2002. On June 19, 2002, the Board provided its Report and Recommendations to the Minister of Environment recommending he accept the Resolution. The Minister of Environment the Report and Recommendations on June 20, 2002.

Cite as: *Bouvry Exports Calgary Ltd. v. Director, Southern Region, Regional Services, Alberta Environment*.

01-133

Appellant(s) – Mr. Joseph Pitt, **Operator** – Burtt Consulting Ltd., **Location** – Red Deer, **Type of Appeal** – Discontinuance of Proceedings

On March 22, 2002 Alberta Environment issued *Water Act* Approval 00183288-00-00 authorizing Burtt Consulting and Development Ltd. to construct, operate and maintain stormwater management works on an unnamed water body in SW 25-38-28-W4M near Red Deer. The Board received a Notice of Appeal from Mr. Joseph Pitt on March 28, 2002 appealing the Approval. The Board held a mediation meeting and settlement conference in Red Deer, following which a resolution was reached by the parties and the Mr. Pitt withdrew his appeal. As a result, the Board issued a Discontinuance of Proceedings on May 31, 2002. The Board recommends the parties involved in the mediation meeting and settlement conference continue open conversations with each other with respect to the drainage works being carried out in the area.

Cite as: *Pitt v. Director, Central Region, Regional Services, Alberta Environment, re: Burtt Consulting and Development Ltd.*
